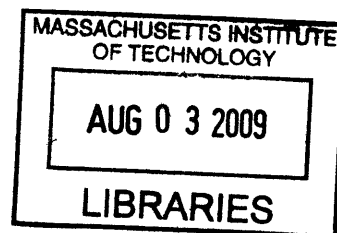


And the Truth Shall Make You Free: The International Norm of Truth-Seeking

by

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B.A. Political Science
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SUBMITTED TO THE DEPARTMENT OF POLITICAL SCIENCE IN PARTIAL
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Submitted to the Department of Political Science
on April 29, 2009 in Partial Fulfillment of the Requirements for the
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ABSTRACT

The theoretical question this dissertation addresses is how do international norms emerge and spread. The theory I propose focuses on changes in the ideational content of norms and on the international agents who facilitate these changes. In the norm emergence stage, the theory's first explanatory variable is a successful precedent, which provides an important point of reference for the ideas associated with the practice. The second explanatory variable is an active epistemic community, which is a committed network of professionals who are strongly attached to the practice and to its rationales, and who actively advance the practice. The third variable is change in the content of the norm, which reflects the assessment of why a specific practice is positive or good and what is it good for or for whom. In the norm cascading stage, the theory proposes two necessary processes: the international institutionalization of the practice; and the emergence of new international expectations and incentives that motivate state leaders to act in accordance with the norm. In the dissertation I utilize my theory to explain the worldwide proliferation of truth and reconciliation commissions. I argue that in the last decade truth and reconciliation commissions and the truth-seeking principle they endorse have emerged and become institutionalized as an international norm. My research traces the emergence of this norm to the Transitional Justice epistemic community, which was consolidated during and after the South African TRC. I demonstrate that members of this epistemic community introduced new ideas about the scope and goals of truth-seeking, particularly the framing of the positive link between truth commissions and democratization, reconciliation, and national healing. These "truth-seeking experts" and their professional activities account for the international spread of these ideas. This spread has created a new environment of international expectations. Accordingly, states have increasingly been motivated to have their own truth commissions in order to establish a benign image and gain international prestige and legitimacy.

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*And ye shall know the truth
and the truth shall make you free.*

John 8:32

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Chapter 1

Introduction

Designer Truth Commissions are one of the ideas that “capture the rhythm of the passing year and the opening of the new millennium,” wrote journalist Tina Rosenberg in the New York Times 2001 ‘End of the Year Magazine.’ Truth commissions proliferated, Rosenberg continues, so that “every nation emerging from dictatorship or war wants one” and they are apparently becoming “a *required* part of any transition to democracy.”¹ More recently, truth commissions, it was noted, are “increasingly deemed to be imperative for the consolidation of democracy”² as well as an “indispensable” or “essential” pillar for resolving conflicts.³

Indeed, in the last decade truth commissions have become a common policy choice for newly democratic states emerging from repressive regimes or intra-state conflict. Truth commissions are truth-seeking bodies set up to investigate past records of human rights violations. The commissions are designed to produce an official version of the state’s history. The underlying assumption is that the investigative process itself and the resulting historical narrative will lead to justice and reconciliation. To date, there have been forty-one truth commissions in various stages of operation, of which twenty-three have been established only in the last decade.⁴ This dissertation asks why and how are truth and reconciliation commissions becoming increasingly prevalent around the world?

¹ Tina Rosenberg, “Designer Truth Commissions in 2001 – The Year in Ideas,” *The New York Times*, December 9 2001, 66. Italic added.

² Tristan Anne Borer, “Truth Telling as a Peace-Building Activity – A Theoretical Overview,” in *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*, ed. Tristan Anne Borer (Notre Dame, IN: University of Notre Dame Press, 2006), 17.

³ David Bloomfield, Barnes, Teresa, Huyse, Luc, ed., *Reconciliation After Violent Conflict: A Handbook* (Stockholm, Sweden: International Institute for Democracy and Electoral Assistance (IDEA), 2003).

⁴ See next chapter for the worldwide trends of truth commissions.

More significantly, how have truth commissions and their anticipated reconciliatory consequences come to be perceived as an “essential” policy for newly democratic states emerging either from repressive regimes or civil wars?

These questions are of particular significance given that truth and reconciliation commissions are being widely prescribed with little knowledge and next to no consensus about their long-term consequences and likelihood of success. Proponents often cite the South African Truth and Reconciliation Commission (TRC, 1995), as the quintessential success case noting its role in preventing a disastrous racial conflict that would have led to the loss of numerous lives.⁵ However, even in the South African case it has been acknowledged that results may be more limited than originally anticipated.⁶ Critics argue that proponents of truth-seeking commissions overstate their importance and that the core assumptions about the relationship between truth-telling and peace building are flawed and supported by neither logic nor evidence.⁷ Some go even further arguing not only that truth commissions do not realize their stated goals of achieving justice, recording a truthful historical narrative and facilitating reconciliation; instead truth commissions, they

⁵ Alex Boraine, “interview by the author, tape recording,” (International Center for Transitional Justice, New York, NY); Lyn S. Graybill, *Truth and Reconciliation in South Africa: Miracle or Model?* (Boulder, CO: Lynne Rienner Publishers, 2002).

⁶ Martin Meredith, *Coming to Terms: South Africa’s Search for Truth* (New York, NY: Public Affairs, 1999).

According to a 2001 survey study there are high levels of “racial isolation” and lack of intra-racial trust, which are proxy measures for the lack of in-depth of reconciliation, in post-TRC South Africa, “Survey evaluates attitudes to racism,” in *Johannesburg SAPA* (FBIS Transcribed Text). For more on this see, James L Gibson, “Does Truth Lead to Reconciliation? Testing the Causal Assumption of the South African Truth and Reconciliation Process,” *American Journal of Political Science* 48, no. 2 (2004). More recent analysis of the same survey offers a more positive evaluation of the effects of the TRC on collective memory and on reconciliation, see James L Gibson, “Overcoming Apartheid: Can Truth Reconcile a Divided Nation?,” *The Annals of the American Academy of Political and Social Science* 603, no. 1 (2006).

⁷ David Mendeloff, “Truth-Seeking, Truth-Telling and Postconflict Peacebuilding: Curb the Enthusiasm?,” *International Studies Review* 6, no. 3 (2004).

argue, “can have perverse effects, sometimes exacerbating tensions and other times providing public relations smoke screens for regimes that continue to abuse rights.”⁸

At this point, it may well be that the “jury is still out” and not enough time has elapsed in order to evaluate the real long-term consequences of truth commissions and, in particular, their deeper social expected impact of facilitating reconciliation. However, common sense suggests that a practice would spread when it is highly successful or at least when its outcome does not lead to a setback. Accordingly, one would expect that the spread of truth commissions will be somewhat slowed by the mixed findings about their consequences and the vocal skepticism as to their merit. Yet the opposite is occurring, and truth commissions by now appear to have become a permanent feature of transitional and post-conflict practices.

This dissertation explains this apparent empirical puzzle. I argue that truth and reconciliation commissions and the truth-seeking principle they endorse have emerged and been institutionalized as an international norm. My explanation focuses on the role of the Transitional Justice epistemic community, which was consolidated during and after the South African TRC. I argue that members of this epistemic community introduced new ideas about the scope and goals of truth-seeking, particularly the framing of the positive link between truth-seeking and democratization, reconciliation, and national healing. These “truth-seeking experts” and their collegial and professional activity account for the international spread of these ideas. The spread of these ideas have created a new environment of international expectations. Accordingly, and as I argue, states are

⁸ Jack Snyder and Leslie Vinjamuri, “Trials and Errors: Principle and Pragmatism in Strategies of International Justice,” *International Security* 28, no. 3 (2004): 20.

increasingly motivated to have their own truth commissions in order to establish a benign image and gain international prestige and legitimacy.

Though truth commissions have so far attracted considerable public and academic attention, with few notable exceptions, there has been little scholarly attention to the international spread of truth commissions. There are two main reasons for this omission. In the first place, in the transitional justice literature there is virtually an undistinguishable mix between scholarship, practice and, policy prescriptions.⁹ Often the same individuals are involved in setting the scholarship agenda as well as advocating the normative, pragmatic or emotional merits of transitional justice mechanisms in general and among them truth commissions. Consequently, there has been a bias towards studying the operation and potential consequences of truth commissions and very little effort to aggregate or explain the international significance of their spread.

Secondly, transitional justice literature often frames its research agenda in terms of the choice states face between trials, truth commissions, or 'collective amnesia' as ways to deal with their legacy of human rights' violations. Consequently most studies focused on the determinants of this choice.¹⁰ These determinants are almost universally

⁹ Leslie Vinjamuri and Jack Snyder, "Advocacy and Scholarship in the Study of War Crime Tribunals and Transitional Justice," *Annual Review of Political Science* 7, no. 1 (2004).

¹⁰ Samuel P Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma Press, 1991), 221-230.; Jon Elster, "Coming to terms with the past: A framework for the study if justice in transition to democracy," *European Journal of Sociology* 39, no. 1 (1998).; Laura N O'Shaughnessy and Michael Dobson, "Political Bargaining and Democratic Transitions: A Comparison of Nicaragua and El Salvador," *Journal of Latin American Studies* 31, no. 1 (1999).; Michelle Sieff and Leslie Vinjamuri, "Reconciling Order and Justice? New Institutional Solutions in Post-Conflict States," *Journal of International Affairs* 52, no. 2 (1999).; Elin Skaar, "Truth commissions, trials – or nothing? Policy options in democratic transitions," *Third World Quarterly* 20, no. 6 (1999).; Kenneth Christie and Robert Cribb, eds., *Historical Injustice and Democratic Transition in Eastern Asia and Northern Europe: Ghosts at the Table of Democracy* (New York, NY: Routledge 2002).; Leslie Vinjamuri and Jack Snyder, "Advocacy and Scholarship in the Study of War Crime Tribunals and Transitional Justice," *Annual Review of Political Science* 7, no. 1 (2004).; Amber Ussery, "Confronting a Troubled Past: Civil Conflict and the Pursuit of Transitional Justice," in *Annual Meeting of the International Studies Association* (March 22-25, San Diego, California: 2006).

domestic and include for example: characteristics of the regime that preceded the transition (e.g., one-party or military rule); characteristics of the transition process (e.g., levels and scope of violence); the way the previous regime or conflict ended (e.g., military victory or negotiated settlement); and the power politics that prevailed throughout the conflict and during the transition (e.g., levels in which former perpetrator still hold power resources deemed vital for the new regime).

Therefore, states' decisions to have truth commissions have been explained primarily in terms of local responses to domestic demands and concerns. According to these domestic "demand-driven" explanations, state officials in newly democratic states respond to calls from domestic pressure groups and come to perceive this process as vital for the stability of their new regime. Truth commissions proliferated, according to these explanations, since they have become the preferred means to curb domestic opposition and to establish the regime's legitimacy and accountability.¹¹

Given the emphasis on domestic conditions, transitional justice literature has been mostly mute about the international aspects of the spread and scope of truth commissions. International factors and actors are usually mentioned in passing and at most are accredited with a facilitating role.¹² Some studies mention the temporal and geographic dimensions of the diffusion of truth commissions. Yet, the process of their spread is not

¹¹ Kenneth Christie and Robert Cribb, eds., *Historical Injustice and Democratic Transition in Eastern Asia and Northern Europe: Ghosts at the Table of Democracy* (New York, NY: Routledge 2002).; A. James McAdams, *Judging the Past in Unified Germany* (Cambridge, UK: Cambridge University Press, 2001).

¹² Naomi Roht-Arriaza, "The Role of International Actors in National Accountability Processes," " in *The Politics of Memory: Transitional Justice in Democratizing Societies*, ed. Alexandra Barahona de Brito, Carmen Gonzalez-Enriquez, and Paloma Aguilar (Oxford, UK: Oxford University Press, 2001).

analyzed or explained and is mostly described as a-political imitation that has an almost automatic nature.¹³

I argue that “demand” side explanations only tell part of the story and that the spread of truth commission is largely the result of “supply” side processes and of the interaction between international and domestic developments and motivations. The basic premise that guides my research is that each state’s decision to carry out a truth commission is not done in an ideational vacuum. On the contrary, decisions are made in an ideational international environment in which what is a “good” or “desirable” policy choice is clearly defined.¹⁴ This dissertation describes and explains how truth-seeking has become a “good” universal principle and how truth and reconciliation commissions have become an internationally “desirable” policy choice in the last decade.

In international relations literature, a few recent studies have drawn attention to the international scope of the truth commissions’ phenomenon. Kathryn Sikkink and Carrie Both-Walling, for example, argue that truth commissions, along with other transitional justice mechanisms (i.e., domestic, foreign, international, and hybrid trials), “are all part of a related global phenomenon – what we call the justice cascade.”¹⁵ They trace the origins of this phenomenon to the principle of universal legalism that emerged after World War II and the cascading of this international norm to the transitions in Latin America. Other international relations scholars, who are primarily interested in the effects

¹³ An example for this type of depiction is found in Priscilla B. Hayner’s Epilog (Looking Forward), in Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, NY: Routledge, 2001), 249-245.

¹⁴ Martha Finnemore, *National Interests in International Society* (Ithaca, NY: Cornell University Press, 1996), 2.

¹⁵ Kathryn Sikkink and Carrie Both-Walling, “Errors about Trials: The Political Reality of the Justice Cascade and its Impact,” in *Annual Meeting of American Political Science Association* (Washington, DC.: 2005), 25. For more on the Justice Cascade see, Ellen Lutz and Kathryn Sikkink, “The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America,” *Chicago Journal of International Law* 2, no. 1 (2001).

of this justice norm, often include a description, as opposed to an explanation, of the norm of truth commissions as a starting point to their analysis.¹⁶

This dissertation diverges from these studies in two critical aspects. In the first place, while these studies describe the spread of transitional justice in terms of an international norm they do not account for the causal mechanisms that explain why and how this norm emerged and cascaded. This dissertation focuses precisely on this question. Second, these studies all view trials and truth commissions as two expressions of the same phenomenon and truth commissions as a development from the norm of justice.¹⁷ I argue that this depiction is erroneous. While the practice of truth commissions has been indubitably related to the norm of justice, it has nevertheless come to embody a set of values and goals that are distinct from the values and goals of criminal justice. In my argument, it is precisely this distinctiveness that accounts for the emergence of the international norm of truth-seeking by its own right.

Theoretical Argument

The general theoretical question this dissertation addresses is how do international norms emerge and spread. Earlier scholarship on non-material, or ideational and normative, phenomena in world politics has focused primarily on establishing that “ideas

¹⁶ Michelle Sieff, "Reconciling Order and Justice? Dealing with the Past in Post-Conflict States" (PhD Dissertation, Columbia University 2002).; Jelena Subotic, "Hijacked Justice: Domestic Appropriation of International Norms, working paper no. 28," (Denver, CO: Human Rights & Human Welfare, University of Denver, 2005).

¹⁷ Jack Snyder and Leslie Vinjamuri, "Trials and Errors: Principle and Pragmatism in Strategies of International Justice," *International Security* 28, no. 3 (2004).. Sikkink and Both-Walling acknowledge that truth commissions have had an “eclectic ideational background” and have diffused differently from trials. They also note that truth commissions may reflect different ideational sources; however, they do not develop or elaborate this line of argument. Kathryn Sikkink and Carrie Both-Walling, "Errors about Trials: The Political Reality of the Justice Cascade and its Impact," in *Annual Meeting of American Political Science Association* (Washington, DC.: 2005), 33.

matter,” i.e., that they have causal effects and influence in world politics.¹⁸ By and large, scholars have engaged in meta-theoretical and epistemological debates that lack adequate empirical elaboration.¹⁹ Consequently, the ideational literature still remains somewhat underdeveloped in answering questions such as how norms originate, how they evolve over time and why. By focusing on the international norm of truth commissions, this dissertation explores the actual process in which the ideational and normative international environment is shaped.

The theory for the emergence and spread of international norms I propose focuses on changes in the ideational content of norms and on the international agents that facilitate these changes. In the norm emergence stage, the independent variable I propose is made of the conjunction between a domestic practice and two conditional variables. The first variable is a successful, or seemingly successful, precedent. This “ideal-type” case has a strong demonstration effect which provides an important point of reference for the ideas associated with the practice. The second variable is an active epistemic community, which is a committed network of professionals and experts-in-their-domain

¹⁸ Albert S Yee, "The Casual Effect of Idea on Politics," *International Organization* 50, no. 1 (1996). Empirical examples include studies about the role of ideas in shaping economic and science policy within states bureaucracies as well as in shaping foreign and international security policies. For example: Peter A Hall, ed., *The Political Power of Economic Ideas: Keynesianism Across Nations* (Princeton, NJ: Princeton University Press, 1989).; Judith Goldstein and Robert Keohane, eds., *Ideas and Foreign Policy: Beliefs, Institutions and Political Change* (Ithaca, NY: Cornell University Press, 1993).; Peter Katzenstien, ed., *Cultural Norms and National Security* (Ithaca, NY: Cornell University Press, 1996).; Martha Finnemore, *National Interests in International Society* (Ithaca, NY: Cornell University Press, 1996).

¹⁹ Yosef Lapid, "The Third Debate: On the Prospect of International Theory in a Post-Positivist Era," *International Studies Quarterly* 33, no. 3 (1989).; Emanuel Adler, "Seizing the Middle Ground: Constructivism in World Politics," *European Journal of International Relations* 3, no. 3 (1997).; Jeffrey Checkel, "International Norms and Domestic Politics: Bridging the Rationalist-Constructivist Divide," *European Journal of International Relations* 3, no. 4 (1997).

For criticism on this research agenda, see John Kurt Jacobson, "Much Ado About Ideas: The Cognitive Factor in Economic Policy," *World Politics* 47, no. 2 (1995).; Stefan Guzzini, "A Reconstruction of Constructivism in International Relations," *European Journal of International Relations* 6, no. 2 (2000).

who are strongly attached to the practice and to its rationales, and who actively advance the practice.

A third intervening variable in the process of norm emergence is change in the content – or the “logic of appropriateness” – of the norm. The “logic of appropriateness” reflects the assessment of why a specific practice is positive or good and what or for whom is it good for.²⁰ The content change that I view as relevant is in the rationalizations that are attached to a practice. There are at least three ways that the content change affects the norm emergence. First, the content change may broaden the range of goals – both moral and practical – expected to be attained by adopting the norm. Second, the content change distinguishes a practice from other similar or alternative practices. Finally, the content change is likely to elevate the normative status of the practice; thereby, attaching positive moral values to the practice and/or to the actors who adopt this practice. These changes make the ideas and practices associated with the norm congruent with more settings, contexts, and states and are likely to make the norm more persuasive.

In the norm cascading stage the theory specifies two processes that are necessary for the international spread of an emerging norm. At the international level, there needs to be a growing institutionalization of the norm’s normative ideas and their behavioral manifestation. This process would be mostly associated with the embeddedness of the norm in new and existing international organizations and with the growing activity of the epistemic community. At the domestic level, I propose that the emergence and institutionalization of the norm broadens the range of states’ motivations for adopting the norm. Specifically, states’ leaders would have new international interest-based

²⁰ James G March and John P Olsen, “The Institutional Dynamics of International Political Orders,” *International Organizations* 52, no. 4 (1998).

motivations to adopt the norm, including the motivation of gaining tangible (e.g., foreign aid, avoiding sanctions) or intangible (e.g., legitimacy, prestige, and the signaling of benign image abroad) international benefits.

The process of the dissertation's theory-building is both deductive and inductive. To begin with, I deduce the variables and mechanisms of the theory from existing norm literature. My theoretical starting point is Martha Finnemore and Kathryn Sikkink's Norm-Life-Cycle model.²¹ To date, this is the most comprehensive attempt to theorize the process in which international norms emerge and spread. Building on Finnemore and Sikkink's model, my theory emphasizes the key role of human agency – norm entrepreneurs – for norm emergence and proposes that at the cascading stage the institutionalization of the norm will initiate new international motivations. Beyond that, however, my theory draws on empirical case studies of other international norms, including the abolition of slavery, decolonization, the ban in the use of chemical weapons, and the norm of humanitarian intervention.²² I draw on the empirical analyses of these norms to induce new and refine existing theoretical propositions. Taken as a whole, the theoretical contribution of this dissertation is of theory refinement and specification.

²¹ Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (1998).

²² James Lee Ray, "The Abolition of Slavery and the End of International War," *International Organization* 43, no. 3 (1989).; Richard Price, *The Chemical Weapons Taboo* (Ithaca, NY: Cornell University Press, 1997).; Laura W Reed and Carl Kaysen, eds., *Emerging Norm of Justified Intervention* (Cambridge, MA: American Academy of Arts and Science, 1993).; Neta C Crawford, *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention* (Cambridge, UK: Cambridge University Press, 2002).

Dissertation Overview

In the following chapter, *The Emergence and Spread of International Norms*, I develop in more details the variables and propositions of my theory and the observable implications these propositions entail. Next, I evaluate the three main alternative explanations for my theory. Namely, that the international emergence and spread of norms is ultimately accounted for by: first, the interests and actions of powerful states; second, the innate positive qualities of the practice associated with the norm; third, the aggregation of discrete domestic practices which are imitated and diffused worldwide.

This chapter also includes a methodology section, which outlines the tools and data I use in my research as well as the criteria for selecting the truth-seeking norm for probing the theoretical propositions developed in the dissertation. I put forward three selection criteria. First, the international phenomenon of truth-seeking commissions is novel and intrinsically interesting. Second, this case controls for alternative power-based explanations. Considering the fact that the practice of this norm is rooted mainly in the international periphery and outside the direct interests of Western powers, it allows us to focus on the net persuasive effects of the ideas and values that are associated with truth-seeking commissions. Third, in view of how highly contested the positive effects of truth commissions are and yet how widespread the practice is, this case qualifies as a 'mediocre norm.' Therefore, this case presents itself as a tough case for the theory. If the theory I advance in this dissertation is capable of explaining the spreading of a 'mediocre norm,' it is expected that it would be able to explain other less-contested cases of international norms.

Chapter 3, *Sprouting Like Mushrooms: The definition and scope of the truth-seeking phenomenon*, substantiates the focus of this dissertation on truth-seeking commissions by distinguishing them from other transitional-historical justice mechanisms. I propose a two-by-two typological framework that differentiates between individual and collective mechanisms and between retributive and restorative mechanisms. I argue that truth commissions are distinct both in principle and in practice from other transitional justice mechanisms that individually name either perpetrators (e.g., lustration, purges, and both domestic and international criminal persecution) or victims (e.g., rehabilitation, reparations and compensation schemes). I make a further distinction between mechanisms adopted by mature, or well-established, democracies (e.g., apologies, historical narrative-revisions, and public commemoration) and those adopted by democratizing states (e.g., truth commissions). This typology clarifies and singles out the unique and novel characteristics of truth-seeking commissions.

In this chapter I also describe and assess the international scope of truth-seeking commissions. I present my own ‘universe of cases’ of all truth commissions between 1974 and 2006 and I identify general geographical and temporal trends in their worldwide proliferation. The analysis of the universe of cases provides initial empirical indication that the practice of truth-seeking commissions has been significantly growing and that we are indeed witnessing a worldwide phenomenon. The data also reveals growing international involvement in the initiation and operation of truth commissions as well as changes in the stated goals of truth commissions.

Chapters four through seven are chronological. They identify the constitution of the truth-seeking norm by tracing the practice of truth commissions and the discourse that

defined them conceptually from post-WWII through early-2000s. At the same time, these chapters correspond with the theory's main propositions. Therefore, they are not primarily written to provide a continuous historical narrative; instead, they focus on key developments and on their causal significance.

Chapter 4, *Seeking Truth: The Origins and Legacy of a Domestic Practice*, analyzes the pre-norm background of the truth-seeking principle. I argue that before the South African TRC and the consolidation of the truth-seeking epistemic community, the practice of and the rationales for the early truth commissions in Latin America were significantly different from what they became later and therefore did not constitute an international norm. I demonstrate how truth commissions emerged as a political and conceptual compromise during the Latin American democratic transitions. Politically, truth commissions aim to balance between the pressures from members of the former regime who wanted to escape prosecution, on the one hand, and domestic and international calls for justice and accountability, on the other.

Conceptually, I argue that truth commissions emerged as the “third way” out of the dichotomy between the universal legalism of the Nuremburg model and the model of collective amnesia as practiced by Portugal and Spain in the 1970s. In addition, in Latin America there was an apparent relationship between the methods of repression (disappearances) and the practical need to investigate the truth. For the most part, before 1992 scholars and human rights practitioners framed the goals of truth commissions narrowly and considered them a “weaker” alternative to trials, which is limited and inappropriate for other contexts, such as the democratic transitions in Eastern Europe.

Chapter 5, *Reconciling Truth: The South African TRC*, focuses on the theory's independent variable: the 'successful case' and the emergence of the epistemic community. In keeping with the chronological organization of my empirical analysis, this chapter covers the years 1992 to 1998, including the process leading to and the operation of the South African TRC. While the political conditions and the negotiation dynamics that preceded the South African TRC were not much different from the conditions that preceded the earlier commissions in Latin America, the South African TRC introduced significant changes in the design, goals, and framing of the commission. In South Africa, the discourse of reconciliation and healing replaced the discourse of political compromise in a way that positively framed the truth-seeking process as a unique alternative to trials.

I identify three factors that explain the unique design and goals of the TRC. The first factor was the post-Cold War international context, in which there was a growing interest in questions of political transitions and specifically on the issue of post-transition justice. Another relevant aspect of the international context was the rise of intra-state conflicts and the specific challenges of reconciliation exhibited by this type of conflicts. The second factor was the South African domestic context, in which important local initiatives during the struggle against apartheid emphasized the importance of reconciliation. The third factor that accounts for the unique path of the TRC was the leadership of Archbishop Tutu and Alex Boraine, both of whom genuinely believed in the need for reconciliation. Above all, they understood the symbolic and strategic value of reconciliation.

I argue that due to its unique design and the rhetoric and perception of success the South African TRC has become an ideal-type model for all subsequent truth-seeking

commissions. Even before the decision to have a TRC, international attention was exceptionally attuned to the struggle against apartheid and followed closely the process of regime change in South Africa. This international predisposition grew only deeper following the TRC publicity. The notion that the TRC accounts for the prevention of bloodshed in South Africa along with the rhetoric of positive expectations that was used extensively in the TRC's intentional "success campaign" have both captured the collective imagination of international audiences.

Moreover, I demonstrate how the process leading to the TRC facilitated the initial intellectual exchange and personal contacts among the truth-seeking epistemic community. The conferences, organized by Alex Boraine, which were held prior to the commission, brought together individuals who shared the causal logic between the truth-seeking process, reconciliation and collective healing. These conferences account for the articulation of this causal logic as well as for the personal contacts that were established among members of the epistemic community. Following their participation in the TRC and in light of its perceived success, these members became "truth-seeking experts" who travel to many countries in transition and publish policy manuals delivering their causal logic worldwide.

Chapter 6, *Elevating Truth: Changes in the "Logic of Appropriateness" of Truth-Seeking Commissions*, analyzes the debates over the following question: are truth commissions a "good" thing and whom are they "good" for? I identify three main debates that framed and reframed the "logic of appropriateness" of truth-seeking commissions. Within the chronology presented so far, this chapter roughly covers the years of the South African TRC (1995-1998) up to the early 2000s.

The first debate, the truth versus justice debate revolved around the question of whether the South African model is generalizable. I demonstrate that the arguments in this debate effectively distinguished truth commissions from trials. The framing of the relative merits of the truth-seeking process shifted the emphasis from what truth commissions can achieve as well as trials to emphasizing what truth commissions can achieve differently and even better than trials. Moreover, there was a growing emphasis on the idea that truth-seeking commissions are appropriate and useful not only for political transitions, but can also facilitate peace-building and conflict resolution processes. This development makes truth-seeking commissions potentially congruent with a greater variety of contexts and settings.

The second debate captures the renewed opposition from advocates of the punitive model. For many human rights activists and legal scholars, truth commissions were an abdication of justice and so they voiced a great concern over their international spread following the South African precedent. Since the new rationales for truth commissions highlighted their distinct goals and merits, this opposition turned into a broader consensus. Essentially, this consensus accepts that both truth commissions and trials may be necessary for dealing with the legacy of human rights' atrocities. Accordingly, the renewed opposition strengthened rather than weakened the truth-seeking principle.

The final debate marks the boundaries of the consensus about the truth-seeking principle. It captures the ongoing scholarly criticism concerning the truth-seeking model. Some critics object to the framing of truth commission as a national affair, while others reject the notion of national healing or the idea that a truth is at all possible. For the most

part, these arguments remained in the margins of the truth-seeking discourse. I argue that their marginalization demonstrates the strength of the consensus that has emerged. I further argue that these debates over the goals and merits of truth commissions have served to consolidate the contacts and the activity of the truth-seeking epistemic community. Members of the epistemic community have come to be considered professional and scholarly experts. Their framing redefined what states should expect to achieve by having a truth-seeking commission and their arguments have made this policy-choice more persuasive. At the same time they account for the international diffusion of this policy-choice via collegial relations, conferences, and other methods of information exchange.

To illustrate this point, I present the case of the Truth and Reconciliation Commission for Bosnia and Herzegovina (2005/6), which is a compelling example of the dynamic involved in the emergence of the truth-seeking norm. Initially, when the conflict in the former Yugoslavia ended in the mid-1990s the option of a truth commission was not considered and the International Criminal Tribunal for the Former Yugoslavia (ICTY) was established. This lack of consideration reflects the consensus at the time that cases of massive human rights violations called for prosecution. However, a decade later the truth commission option resurfaced with the goals of reconciliations and national healing; thereby, exhibiting the new “logic of appropriateness” for truth commissions.

Chapter 7, *Truth for All: The Cascading of the Truth-Seeking Norm*, analyzes the theory’s two propositions about the norm cascading stage: the growing international institutionalization of the norm; and the broadening of state’s motivations for adopting the norm. I evaluate whether these two processes, namely international

institutionalization and motivations broadening are not only an indication for the existence of an international norm but also the mechanisms that facilitate the further cascading of the truth-seeking norm. Chronologically, this chapter covers the early to mid-2000s, when the ideas and practices associated with the truth-seeking principle supposedly attain a “taken for granted” status and, therefore, generates expectations and places constraints on states’ behavior.

The analysis of the institutionalization at the international level includes several empirical measures. First, I demonstrate how major international organizations, including leading human rights non-governmental organizations (NGOs) and the United Nations, came to officially endorse the truth-seeking principle and widely recommend the practice of truth and reconciliation commissions. Next, I discuss how this institutional embeddedness of the truth-seeking principle has been further reinforced by the emerging universal right to truth. Finally, I analyze the institutionalization and professionalization of the transitional justice epistemic community, including the founding and on-going activities of the International Center for Transitional Justice (ICTJ) and the emergence of transitional justice as a distinct and prolific field of academic study. I demonstrate how the ICTJ specifically has been spawning domestic demand for truth commissions by introducing the concept and potential merits of the truth-seeking process to places where there has been next to no local knowledge about them.

The second part of the chapter explores the proposition that as the norm gets institutionalized there are growing international motivations to adopt it. I look systematically at the cases of Uruguay and Burundi, where truth commissions were attempted both before and after the norm cascading stage. I also analyze the case of

Morocco, where local conditions would have not predicted the establishment of a truth commission, yet one was established in 2004. While domestic calls for truth and justice played an important role in all three cases, in Burundi's second commission, and more so in Morocco, international factors were exceedingly important in leading to the truth-seeking process.

The empirical findings of my dissertation and the theory I develop make important contributions to the policy and academic debates surrounding transitional justice mechanisms as well as to the academic literature on international norms. In the conclusion chapter, I propose both the empirical and theoretical implications and applications of this study. In the first place, my study suggests that the spread of truth commissions indicates a change in the international normative environment, mainly the expansion of the international human rights regime to include the novel notion that truth is both an individual and collective human right. I foresee that truth and reconciliation commissions will remain a permanent and important part of processes of political transition and conflict resolution around the world. Specifically, I propose that what truth commissions do best lies in the way they legitimize and make possible the political compromises needed for conflict resolution. Accordingly, I predict their increasing role for negotiating conflicts, where the process of truth-seeking is not merely a compromising outcome but rather an important asset to be negotiated in exchange for tangible tradeoffs.

Second, my findings lend themselves to developing clear tools and guidelines to evaluate the effects of truth commissions. Contrary to some recent efforts to aggregate early and late cases of truth commissions and evaluate their impact on areas such as

democratization, human rights and trust, my findings suggest a different approach. More specifically, when assessing the effects of truth commissions both scholars and policy analysts should be aware that truth commissions at different stages of this norm operate under different expectations and hence ought to be evaluated differently for their effects.

Third, my theory of norm emergence draws much needed attention to the ideational content of norms. It provides the conceptual as well as the empirical guidelines for identifying the origins and changes in the content of international norms and their consequent effects on the spread of these norms. In the conclusions I demonstrate how these guidelines can be applied to explain other cases of international norms. Given that I probe the theory on a single case study, the generalizability of my theory is not without caveats. I contend that each of the propositions of my theory as well as their combined operation is not necessarily sufficient for norm emergence nor do they explain all ways in which international norms emerge. However, I conclude that the causal explanation that I outline identifies the conditions and the processes that make international norms possible and even probable.

Chapter 2

The Emergence and Spread of International Norms

In the last decade the interest in norms took hold in international relations scholarship. Essentially, the study of norms asks two questions. The first question is how do norms emerge and spread? The second question is what are the independent effects of international norms on social and political outcomes, whether international or domestic? The theory presented here focuses on the first question.¹ Accordingly, this study view norms as outcomes, that is, as the dependant variable.

The literature on norm emergence has generated a number of important insights about the actors and mechanisms that account for the emergence and selection of international norms. I am building on this literature and specifically on the first two stages of Finnemore and Sikkink's Norm-Life-Cycle model:² the *norm emergence* stage, in which new ideas are introduced and selected; and, the *norm cascading* stage, in which ideas are institutionalized and there is a broad or broadening norm acceptance. While the Finnemore and Sikkink model is often-cited, its variables and mechanisms are underspecified and it was never really demonstrated or tested on a specific case. The theory I propose in this chapter offers better specification of the variables and mechanisms in the process of norm emergence and spreading. In the norm emergence stage, the independent variable I propose is made of the conjunction between a domestic

¹ The question of the effects of norms is very important and most of the theoretical and empirical literature on norms in international relations focuses on this question. For example, Albert S Yee, "The Casual Effect of Idea on Politics," *International Organization* 50, no. 1 (1996).; Audie Klotz, *Norms in International Relations: The Struggle Against Apartheid* (Ithaca, NY: Cornell University Press, 1995).; Richard Price, *The Chemical Weapons Taboo* (Ithaca, NY: Cornell University Press, 1997).

² Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (1998). In this model, the final stage – norm internalization – the international norm is expected to acquire a "taken-for-granted quality" and would no longer be a matter of public debate.

practice and two conditional variables. The first variable is a successful, or seemingly successful, precedent. This “ideal-type” case has a strong demonstration effect which provides an important point of reference for the ideas associated with the practice. The second variable is an active epistemic community, which is a committed network of professionals and experts-in-their-domain who are strongly attached to the practice and to its rationales, and who actively advance the practice. A third intervening variable in the process of norm emergence is change in the content – or the “logic of appropriateness” – of the norm. The “logic of appropriateness” reflects the assessment of why a specific practice is positive or good and what or for whom it is good for.

In the norm cascading stage the theory specifies two processes that are necessary for the international spread of an emerging norm. At the international level, there needs to be a growing institutionalization of the norm’s normative ideas and their behavioral manifestation. This process would be mostly associated with the embeddedness of the norm in new and existing international organizations and with the growing activity of the epistemic community. At the domestic level, I propose that the emergence and institutionalization of the norm broadens the range of states’ motivations for adopting the norm. Specifically, states’ leaders would have new international interest-based motivations to adopt the norm, including the motivation of gaining tangible (e.g., foreign aid, avoiding sanctions) or intangible (e.g., legitimacy, prestige, and the signaling of benign image abroad) international benefits.

The organization of this chapter follows the theory’s main variables. I open with a definition of an international norm, which is this study’s dependant variable. Then, I define each of the model’s variables and mechanisms, offer specific explanatory

propositions, and specify the observable implications these propositions entail. For each of the propositions I also present the alternative explanations that have been previously proposed in the norm literature and evaluate their utility and validity relative to my own explanation. Next, I evaluate the three main alternative explanations for my theory as a whole. Namely, that the international emergence and spread of norms is ultimately accounted for by: first, the interests and actions of powerful states; second, the innate positive qualities of the practice associated with the norm; third, the aggregation of discrete domestic practices which are imitated and diffused worldwide. Finally, I conclude this chapter with a methodology section, which outlines the methodological tools I use in my research as well as the criteria for selecting the truth-seeking norm for probing the theoretical propositions developed here.

Defining International Norms

In this study international norms are defined as “a standard of appropriate behavior.”³ The central component of this definition is the notion of appropriateness:

“Appropriateness ... involves cognitive and ethical dimensions, targets, and aspirations. As a cognitive matter, appropriate action is action that is essential to a particular conception of self. As an ethical matter, appropriate action is action that is virtuous.”⁴

The cognitive dimension of appropriateness defines norms as constitutive. Accordingly, the very act of following the norm specifies the identity of actors and creates new interests for them. They also explain why and how other relevant actors

³ Ibid.: 891.

⁴ James G March and John P Olsen, "The Institutional Dynamics of International Political Orders," *International Organizations* 52, no. 4 (1998). 951 }

recognize the states' new constituted identity.⁵ For example, the principle of sovereignty, first introduced in Westphalia in 1648, constituted the identity of modern states thereby creating new motivations and behaviors for these states and establishing the mutual recognition of these states as peers.⁶ In this sense, norms provide meaning for actions and go beyond enabling and constraining policy choices.⁷ The ethical dimension of appropriateness connotes the behavior or practice associated with a norm as correct, right, and even morally good. In this sense, norms are not merely a behavioral regularity or a standardized behavior.⁸ Instead, norms by definition add value to behavior and necessarily relate to what is considered acceptable or not acceptable by a larger community; that is, norms have a sense of shared moral assessment.⁹ The example of humanitarian intervention illustrates the ethical dimension well; whereas the moral cause of preventing gross human rights violations justifies the action of international intervention.¹⁰ This aspect is critical for our understanding of why states adopt

⁵ Ronald L. Jepperson, Alexander Wendt, and Peter J. Katzenstein, "Norms, Identity and Culture in National Security," in *The Culture of National Security: Norms and Identity in World Politics* ed. Peter J. Katzenstein (New York, NY: Columbia University Press, 1996), 54.

⁶ John Gerard Ruggie, "Continuity and Transformation in the World Polity: Toward and Neorealist Synthesis," in *Neorealism and its Critics*, ed. Robert O. Keohane (New York, NY: Columbia University Press, 1986).

⁷ The definition of a constitutive norm is often presented as opposed to regulative norms. Regulative norms are "rules that govern social life and set a range of actions, including rights and obligations." Arie M. Kacowicz, *The Impact of Norms in International Society: The Latin American Experience, 1881-2001* (Notre Dame, IN: University of Notre Dame Press, 2005), 20. See also, Annika Bjorkdahl, "Norms in International Relations: Some Conceptual and Methodological Reflections," *Cambridge Review of International Affairs* 15, no. 1 (2002), specifically p. 15; Gregory A. Raymond, "Neutrality Norms and the Balance of Power," *Cooperation and Conflict* 32, no. 2 (1999), specifically p. 128.

An example for a regulative norm is the Geneva Convention, which regulates the actions of participants in an international armed conflict with regard to prisoners of war, see James D. Morrow, "The Institutional Features of the Prisoners of War Treaties," *International Organization* 55, no. 4 (2001).

⁸ Janice Thomson, "Norms in International Relations: A Conceptual Analysis," *International Journal of Group Tensions* 23, no. 2 (1993); Robert Axelrod, "An Evolutionary Approach to Norms," *American Political Science Review* 80, no. 4 (1986), specifically p. 1097.

⁹ The idea of shared understanding by a larger community is often termed in constructivist literature as inter-subjectivity.

¹⁰ Laura W. Reed and Carl Kaysen, eds., *Emerging Norm of Justified Intervention* (Cambridge, MA: American Academy of Arts and Science, 1993).

international norms. Only if there is shared moral assessment would states be motivated to follow international norms for reasons of international prestige and legitimization. That is, rational international incentives to adopt a specific behavior or practice stem from the fact that the larger international community value this behavior or practice.

In addition to these elements of identity and virtue, norms are defined by their functionality, that is, they either proscribe or prescribe. By far, most of the international relations literature focuses on norms of prohibition. That is, on norms which designate a specific behavior as deviant and that successfully suppress this behavior. Examples include the abolition of slavery, the ban on chemical weapons and the criminalization of women trafficking or trade with illicit drugs.¹¹ The focus on norms of prohibition follows the Weberian notion that sanctions on deviancy are an essential defining element of norms.¹² However, this focus on norms of prohibition leads to an unwarranted bias. When studying norms of prohibition there is a tendency to focus on states' negative motivations, such as the threat of sanctions, as opposed to positive motivations such as the practical and moral merits associated with the norm. In this study therefore, I limit the explanatory power of my theoretical propositions to prescriptive norms, that is, norms that are advocating, rather than banning social or political practices.¹³ The spread of prescriptive norms is likely to be more a matter of voluntary adoption rather than a response to the threat of sanctions. Moreover, prescriptive norms are likely to be related and emerge from a broader normative agenda (e.g., women's right to vote or gender

¹¹ Ethan A Nadelmann, "Global Prohibition Regimes: The Evolution of Norms in International Society," *International Organization* 44, no. 4 (1990), specifically, p. 480.

¹² Gary Goertz, *International Norms and Decision Making: A Punctuated Equilibrium Model* (Lenham, MD: Rowman & Littlefield Publishers Inc., 2003), 32-33.

¹³ *Ibid.*, 10.

equality in general, international humanitarian intervention, providing asylum and accepting refugees).

To sum, this study follows a definition of international norm which highlights three key characteristics: first, norms are *constitute* the identity of states as opposed to merely regulate their behavior; second, norms carry *moral* imperatives; third, norms *prescribe* a course of action. This definition dictates the type of the expected observable implications. In the first place, the repeated occurrence of the practice associated with the norm, that is, the behavioral compliance with the norm, might be necessary but is definitely an insufficient measure for a spreading international norm. Instead, empirical evidence should include the interpretation and specification of the identity the norm supposedly constitutes as well as the moral imperatives associated with the behavioral practice that is prescribed by the norm. Second, one needs to convincingly demonstrate that these interpretations are being shared at the international level. Finally, norms are a continuous dependant variable. As such, they progress from a stage of emergence to cascading, in which they are institutionalized in varying degrees.¹⁴

Norm Emergence

As was noted above, norms are a continuous variable and should be studied as a dynamic process starting with norm emergence. I argue that international norms are not the mere aggregation of domestic practices. Instead, the dynamic of norm emergence is largely a supply-driven process, in which a normative agency accounts for the emergence of new ideas and for the spread of their prescribed course of action. The independent

¹⁴ Jeffery W Legro, "Which Norms Matter? Revisiting the 'Failure' of Internationalism," *International Organization* 51, no. 1 (1997): 33.

variable I propose is made of the conjunction between a domestic practice and two conditional variables: a successful or seemingly successful precedent (Conditional Variable I) and an active epistemic community (Conditional Variable II). The third variable in the dynamic of norm emergence is change in the content – or the “logic of appropriateness” – of the norm (Intervening Variable I).

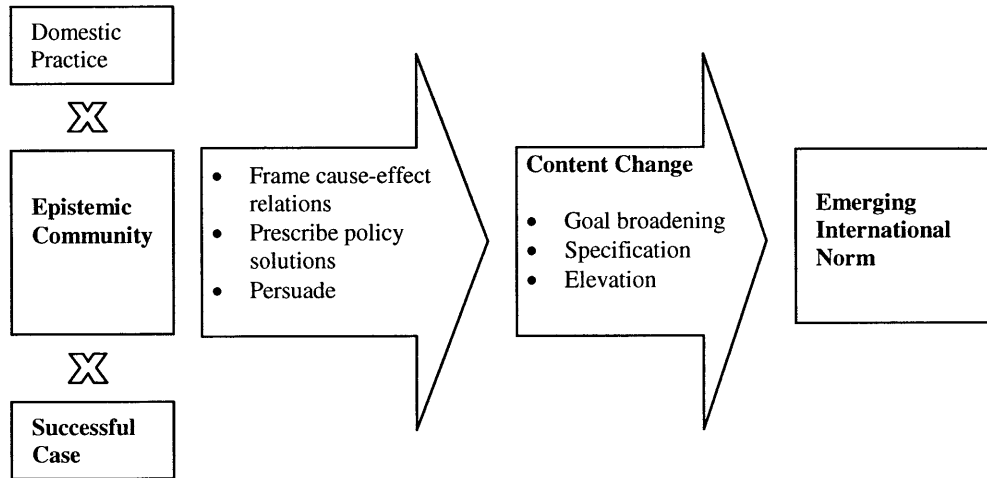


Diagram 1: Norm Emergence

Conditional Variable I – Successful Case

The first proposition my model sets forward is that a successful, or seemingly successful, ideal-type case, is a necessary catalyst for the emergence of an international norm. This case reflects the perception that a successful application of the norm’s practice has positive consequences. Accordingly, the key aspect of this successful case is its strong demonstration effect which provides an important point of reference for the ideas associated with the practice.

What makes a specific case a “successful case”? The ideal-type identification of a case is unlikely to be manipulable but rather contingent. Accordingly, a precedent is likely to become one when: first, there is wide international perception that indeed the

application of norm's practice had positive consequences; second, it has wide international attention and publicity; third, it is a unique case in the sense that it sets new challenges that appear to require original problem-solving ideas; third, it brings together a group of individuals who aspire and are capable of providing these original problem-solving ideas.

The importance of precedents is not absent from norm literature. "Critical states" are sometimes noted as a necessary condition for the norm to spread.¹⁵ Commonly in empirical studies of norms, "critical states" are the leading powers in the international system that have a strong demonstrative effect and are also able to enforce the norm. This conceptualization, however, is problematic as there is no theoretical logic for the argument that norm leaders must be congruent with current distribution of power in the international system. In fact, this type of logic runs counter to the main assertion of norm scholars, which is that norms have their own independent effects (that is, independent from power relations). This bias is unfortunate as it opens the door to precisely the sort of criticism that norm scholars have been facing, namely, that it is not the power of ideas that independently matters, but rather the distribution of power that determine behavior.

I propose that the critical role of a specific state in the process of norm emergence has little to do with the innate characteristics of that specific state. Instead, its role stems from the successful, or seemingly successful, application of the normative practice by this state. In the dynamic of norm emergence this case will be often referred to as an "ideal

¹⁵ Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (1998): 901.

type” by both international and domestic actors, which respectively advocate and consider the implementation of the normative practice in other states.¹⁶

Conditional Variable II - Epistemic Community

A successful application of a domestic practice – the “ideal-type” precedent – is an insufficient condition for norm emergence. Rather, it entails human agency that actively initiates the process of international norm emergence. The second proposition of my model utilizes the epistemic community framework. Epistemic community is “a network of professionals with recognized expertise and competence in a particular domain and authoritative claim to policy-relevant knowledge within that domain or issue-area.”¹⁷ This framework has several key characteristics that are particularly invaluable for explaining the origination of new normative ideas and practices. First, it focuses on professional experts who build on their professional knowledge and credentials to introduce and positively frame problem-solving policy solution. Second, this framework does not assume ideational consensus; instead, it accepts that there are debates among experts over new problem-solving solutions and directs us to explore how these debates have been resolved. Finally, it emphasizes the critical role of specific individuals in the process of norm emergences.¹⁸

¹⁶ An example of a successful case is the intervention in Iraq (1991) which played a significant role in the emergence of the new international norm of justified intervention. Anne-Marie Slaughter Burley and Carl Kaysen, "Introductory Note: Emerging Norms of Justified Intervention," in *Emerging Norms of Justified Intervention*, ed. Laura W Reed and Carl Kaysen (Cambridge, MA: American Academy of Arts and Science, 1993).

Peter M Hass, "Introduction: epistemic communities and international policy coordination," in *Knowledge, Power and International Policy Coordination* ed. Peter M Haas (Columbia, SC: University of South Carolina Press, 1997), 3.

¹⁸ The importance of specific individuals for gaining the attention of new issues cannot be overstated. For example, Henry Dunant, who envisioned and established the International Committee of the Red Cross (ICRC) in 1863. A more recent example is of Michael Klare and Edward Lurance, both of which were scholars of conventional arms trade that played a critical role in shaping the ideas and international policies

While central to the constructivist research agenda, international norms' agency has been relatively understudied and surprisingly under-theorized.¹⁹ The two main alternatives for normative agency found in the literature are international organizations and advocacy networks.²⁰ International organizations, as the argument goes, are effective agents for social or normative change. They combine legitimacy and authority,²¹ and they socialize or teach domestic elites to redefine their interests and to accept new political goals and new values.²² International organizations may also pressure and provide positive as well as negative incentives for states to accept these goals and values, which lead to changes in policy.²³ Whether one emphasizes the normative-based or interest-based influence of international organizations, the main shortcoming of this agency for explaining the emergence of new ideas and norms is that these organizations often bandwagon rather than lead the ideational process. That is, they often do not originate or

on small arms, see Denise Gracia, *Small Arms and Security: New Emerging International Norms* (New York, NY: Routledge, 2006).

¹⁹ There are two main reasons why the causal role of agency is understudied in constructivist research agenda: first, constructivists criticize rationalist monocausal explanations and therefore do not name the international system, domestic politics or the individual decision-maker as the sole casual source of interests and behaviors; second, many constructivists borrow concepts from sociological approaches (e.g., culture, identity) and often leave agency out on purpose in order to emphasize the components and effects of social structures. Alexander Wendt, "The Agent – Structure Problem in International Relations," *International Organization* 41, no. 3 (1987).; Alexander Wendt, "Collective Identity Formation and the International State," *American Political Science Review* 88, no. 2 (1994).; Martha Finnemore, "Norms, Culture and World Politics: Insights from Sociology's Institutionalism," *International Organization* 50, no. 2 (1996).; Jeffrey Checkel, "The Constructivist Turn in International Relations Theory," *World Politics* 50, no. January (1998).

²⁰ Another alternative agency in the process of norm emergence is the state, and especially great powers. I consider the role of great powers enforcement for norm emergence later in this chapter as part of my discussion on alternative explanations.

²¹ Michael Barnett and Martha Finnemore, "The Politics, Power, and Pathologies of International Organizations," *International Organization* 53, no. 4 (1999).

²² Connie McNeely, *Constructing the Nation-State: International Organizations and Prescriptive Action* (Westport, CT: Greenwood Press, 1995).; Martha Finnemore, "International Organizations as Teachers of Norms: The United Nations Educational, Scientific, and Cultural Organization and Science Policy," *International Organization* 47, no. 4 (1993).; Martha Finnemore, *National Interests in International Society* (Ithaca, NY: Cornell University Press, 1996).

²³ Jon C Pevehouse, "Democracy from the Outside-In? International Organizations and Democratization," *International Organization* 56, no. 3 (2002).

create new ideas, but rather become potent later on in the process as new ideas are institutionalized when the norm cascades.²⁴

The second and the most common conceptualization for norm entrepreneurs are transnational advocacy networks.²⁵ Members of advocacy networks share normative values and are actively seeking to create new international norms and to amplify their normative, and usually global, agenda.²⁶ Membership in these networks may include local organizations and activists, agencies within regional and international organizations, international and domestic research institutes, churches, media specialists, intellectuals, and foundations.²⁷

The main contribution of this framework is its focus on advocacy and particularly the causal role of argumentation in accounting for the networks' persuasiveness and the creation of new majority views. Neta Crawford, for example, convincingly demonstrates the causal effect of rational and moral reasoning and arguments leading to the emergence and spread of the international norm of decolonization.²⁸ At the same time, however, the

²⁴ Neta Crawford demonstrates that during process of norm emergence of the international norm of decolonization, international organizations (like the United Nations) only endorsed the norm later in the process. Neta C Crawford, "Decolonization as an International Norm" *The Evolution of Practices, Arguments and Beliefs*, in *Emerging Norm of Justified Intervention*, ed. Laura W Reed and Carl Kaysen (Cambridge, MA: American Academy of Arts and Science, 1993)..

²⁵ Thomas Risse and Kathryn Sikkink, "The socialization of international human rights norms into domestic practices: introduction," in *The Power of Human Rights: International Norms and Domestic Change*, ed. Thomas Risse, Stephen C Ropp, and Kathryn Sikkink (New York, NY: Cambridge University Press, 1999).

²⁶ Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998), 34. For empirical example see, Audie Klotz, *Norms in International Relations: The Struggle Against Apartheid* (Ithaca, NY: Cornell University Press, 1995).; Paul Wapner, *Environmental Activism and World Civic Politics* (Albany, NY: New York State University Press, 1996).; Daniel C Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism* (Princeton NJ: Princeton University Press, 2001).

²⁷ Thomas Risse-Kappen, "Ideas do not float freely: transnational coalitions; domestic structure and the end of the cold war," *International Organization* 48, no. 2 (1994).

²⁸ Neta C Crawford, *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention* (Cambridge, UK: Cambridge University Press, 2002).; Markus Kornprobst, "Argumentation and Compromise: Ireland's Selection of the Territorial Status Quo Norm," *International Organization* 61, no. 1 (2007).

advocacy network framework has two significant shortcomings. First, advocacy networks seem to imply that normative ideas exist prior to the formation of the network and therefore rarely capture any debate within the network about these ideas. It assumes that there is a broad consensus about the moral agenda and its implications. Consequently this framework is less useful for identifying the ideational origins of more specific practices or policies and for issue areas where the normative consensus about how to achieve specific goals is not necessarily broad or clear.

Second, this framework assumes that the advocacy network is purposefully seeking to create international norms. Accordingly, the norm entrepreneurs supposedly have a clear normative and political agenda from the initial stages of their formation as a group. This depiction assumes that normative agendas are fixed and does not account for the dynamic of ideational change and its role creating international norms. Moreover, it omits questions about how and why specific advocacy network emerges and what makes it successful.²⁹

The epistemic community framework I propose overcomes these shortcomings. An epistemic community is a type of network that is more specific in terms of the issue-area and policy domain around which it is organized.³⁰ While an epistemic community

²⁹ Studies of advocacy networks often offer a tautological answer to the question what makes specific network successful: a successful advocacy network is the one that has an unexplained ability to persuade. Similar problem exists in studies of social movements and interest groups whereas the explanation of a group's success in mobilizing for social change is overdetermined and stem from the researcher's knowledge of the outcome. Jeffery W Legro, "The Transformation of Policy Ideas," *American Journal of Political Science* 44, no. 3 (2000).

To minimize this problem this study does two things: first, pays attention to the contingencies that condition the success of the specific epistemic community; second, pays attention to internal debates that highlight the alternative ideational options that haven't developed into an international norm.

³⁰ For example, the group of American scientists and civilian strategists who developed ideas and policies with regard to nuclear arms control or the group of cetologists (scientists who study marine mammals) who advocated the international management of whaling Emanuel Adler, "The Emergence of cooperation: national epistemic communities and the international evolution of the idea of nuclear arms control," in *Knowledge, Power and International Policy Coordination*, ed. Peter M Hass (Columbia, SC: University of

may be part of a broader advocacy network; it is nevertheless a distinct group which is of smaller scope.³¹ The constitutive element of an epistemic community is the knowledge-based expertise and the official professional credentials of its members in a given issue-area. As a community of knowledge the epistemic community is likely to be important in situations of great uncertainty, where its expert-members identify problems and desired outcomes and prescribe policy solutions. While members of the epistemic community may or may not share a set of normative beliefs, they do share causal beliefs, that is, beliefs on how knowledge is produced, assessed and reproduced.³²

The main mechanism for producing, selecting, and legitimizing ideational innovations – in our case, for norm emergence – is the framing of cause-effect relationship between problems states' face and the policy prescriptions proposed by the experts.³³ Members of the epistemic community are framing the range of political controversy surrounding a policy issue and provide states with new ways to identify the national interest and redefine their needs and goals. They also propose policy solutions and set standards for their application.³⁴ Moreover, the epistemic community accounts for the international transfer of the policy via collegial relations, conferences, and other

South Carolina Press, 1997).; M J Peterson, "Whalers, cetologists, environmentalist, and the international management of whaling," in *Knowledge, Power and International Policy Coordination*, ed. Peter M Hass (Columbia, SC: University of South Carolina Press, 1997).

³¹ For example, the role of scientists and conservationists' organizations in the 1970s and 1980s in placing of environmental issues on policy agenda. Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY Cornell University Press, 1998), 125 and 161.

³² Ibid., 1, fn.2.

³³ Framing is defined as the production of meaning as a type of influences and a mobilizations strategy. Sidney Tarrow, *Power in Movement: Social Movements and Contentious Politics* (Cambridge, UK: Cambridge University Press, 1998).

³⁴ Emanuel Adler and Peter M Hass, "Conclusion: epistemic communities, world order and the creation of a reflective research program," in *Knowledge, Power and International Policy Coordination* ed. Peter M Hass (Columbia, SC: University of South Carolina Press, 1997), 375.

methods of information exchange. Often, members of the epistemic community will also have direct access to state leaders and bureaucracies.³⁵

This framework offers clear observable implications as a measure for the emergence and consolidation of an epistemic community and for its effects. The first step is the identification of community membership, including the focus on specific individuals who would become the ideational leaders and the hard-core experts in a specific policy-domain. For these members, one should be able to observe the set of principles and causal beliefs that bring them together. Rather than a normative consensus, we are likely to observe a debate within the epistemic community and with competing communities (that is, with groups of experts that advocate different problem-solution relations and advance different normative principles in the same issue-area). In the process of norm emergence, these debates frame and sharpen the arguments about policy choices and are an important factor in shaping ideational innovations and their broader acceptance.

Unlike what has been assumed to be the motivations of norm entrepreneurs, members of the epistemic community are not primarily “do-gooders” who engage in a conscious effort to create an international norm. Instead, they are academics and policy professionals, who seek to solve policy problems their specific issue-area. As the community consolidates we are likely to find growing vested personal and professional interests in the new idea and in its spreading, including the trivial personal motivation of job perpetuation.

³⁵ Peter M Hass, "Introduction: epistemic communities and international policy coordination," in *Knowledge, Power and International Policy Coordination* ed. Peter M Haas (Columbia, SC: University of South Carolina Press, 1997), 6., Table 1.

The next set of observable implications has to do with tracing the community's activity, including formal (e.g., conferences, committees) and informal (e.g., personal ties and friendships) channels of communication. Here we are likely to find that as the epistemic community consolidates – during and following the successful case – its pattern of activity becomes more formal and frequent. Overall, we should observe growing institutionalization of the community's activity, including growing access to decision-makers and direct participation and/or influence on states' decision-making within the issue-area of their expertise.

The final set of observable implications identifies the factors that make the epistemic community persuasive, that is, successful in spreading its ideas. The first factor is the professional credibility of its members and their relevant expertise. The second factor is that their new ideas are coherent with preexisting beliefs.³⁶ The third factor is the receptiveness of their targets, states' leaders in our case, which is likely to be higher when faced with greater uncertainty. Finally, the growing professionalization of the community is likely to make it even more persuasive and influential.

Intervening Variable I - Content of the Norm

As noted above, a norm is “a standard of *appropriate* behavior.” The “logic of appropriateness” reflects the assessment of why a specific practice is positive or good and what or for whom is it good for. Accordingly, my third proposition is that change in the content of norm, i.e., change in the ‘logic of appropriateness’ that is attached to a specific practice, is likely to make the rationales for adopting the practice more persuasive and the practice itself more desirable.

³⁶ Neta C Crawford, *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention* (Cambridge, UK: Cambridge University Press, 2002), 112-117.

The norm literature often proclaims its focus on change. By and large, change has been interpreted in two ways: first, “change in the broadly accepted standards of international behavior,” that is, the general process norm emergence and the dynamic of change from one norm to another (for example, from practicing slavery to condemning it); second, change in the norms’ effects and/or effectiveness, that is, the ways in which norms change other features of the political landscape.³⁷ However, the content of the norm is almost universally static and almost universally a “fixed” independent variable.³⁸

This conceptual stasis is untoward on both empirical and theoretical grounds. First, it does not provide an accurate description of norms.³⁹ Instead of focusing on changes in the content of norms, changes that are observed are described as the mere adaptation of the norm to different contexts and settings. Second, the conceptual stasis becomes specifically acute when scholars begin to aggregate and debate the effects of norms. Both advocates of “norms matter” and their critics tend to pile up cases from different stages of the norm life-cycle as a way of demonstrating their effects or lack

³⁷ Sheri Berman, “Ideas, Norms, and Culture in Political Analysis,” *Comparative Politics* 33, no. 2 (2001): 234.

³⁸ Gary Goertz, *International Norms and Decision Making: A Punctuated Equilibrium Model* (Lenham, MD: Rowman & Littlefield Publishers Inc., 2003), 49-51.

An exception that specifically defines norms as a dependent variable and focuses on change within norms is Ann Florini’s Evolutionary Model. Drawing on the analogy between genes and norms, the evolutionary model describe a quasi-natural selection process that explains how a norm is selected among many competing norms. The main mechanism is of adaptation, which is a necessary condition for the norm to diffuse internationally. Ann Florini, “The Evolution of International Norms,” *International Studies Quarterly* 40, no. 3 (1996).

³⁹ For example, in studies of the abolition of slavery norm the “logic of appropriateness” is often portrayed as either the logic of declining profitability or the logic of moral progress. In reality, idealism was not an alternative to economism. Instead, these were two ways of framing that reflect different stages in the norm’s development. For the most part, economic arguments characterized the norm’s emergence and normative arguments gained more prominence as the norm spread. James Lee Ray, “The Abolition of Slavery and the End of International War,” *International Organization* 43, no. 3 (1989).

there of. Results are likely to be skewed as different logics for the norm's adherence likely to have operated in these different stages.⁴⁰

What type of changes should one observe and what are the likely effects of these changes? Since persuasion is a key mechanism for norm emergence and spreading, the expected change is in the rationalizations that are attached to a practice.⁴¹ There are at least three plausible changes that are likely to make the norm more persuasive. First, the content change may broaden the range of goals – both moral and practical – expected to be attained by adopting the norm. Second, the content change will distinguish the specific practice of the norm from other similar or alternative practices. Finally, the content change is likely to elevate the normative status of the practice; thereby, attaching positive moral values to the practice and/or to the actors who adopt this practice. These changes make the ideas and practices associated with the norm congruent with more settings, contexts, and states and are likely to make the norm more persuasive.

The main alternative proposition is that these changes are not an explanatory variable in the process of norm emergence but merely an indication that the norm is being adapted to various contexts. As this argument goes, these changes may reflect a process of rational adaptation. Accordingly, norms change because they spread as opposed to spread because they change. Since the change in the logic of appropriateness is observed mainly in argumentation and discourse, timing is significant evidence. If the change in

⁴⁰ The conceptual stasis creates a validity problem in variables' coding in large-n studies. For example, in his criticism of Democratic Peace Theory, Ido Oren notes that the quantitative studies that aim to evaluate this theory ignore the simple fact that since 1815 democratic values have changed significantly over time (that is, change in what is a democracy (identity). Also there has been a significant change in what it means to be a democracy (behavioral expectations). Consequently, evidences for the validity of the democratic peace theory or for its effects are often skewed. Ido Oren, "The Subjectivity of Democratic Peace: Changing US Perceptions of Imperial Germany," *International Security* 20, no. 2 (1995).

⁴¹ Neta C Crawford, *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention* (Cambridge, UK: Cambridge University Press, 2002), 97.

discourse is concurrent or follows the worldwide adoption of the domestic practice, it may be dismissed as mere rhetoric. But if my proposition is valid the change in discourse would precede the growing adoption of the norm's behavioral manifestation. This evidence may not be sufficient to determine the direction of causality between the content change and the spread of the norm. The critical evidence, in this case, is the "accretion" of the content change. If the rational adaptation proposition is valid the argumentations in support of the practice would vary by cases and different contexts would entail different arguments. If the content change proposition is valid then the change in the augmentation is likely to be cumulative and later reflected in the institutionalization of the norm.

Norm Cascading⁴²

The cascading, that is, the broad acceptance of an international norm, is to a large extent a continuation of the norm emergence dynamic. I propose that the norm cascading stage is characterized by two processes: at the international level, a growing institutionalization of the norm's normative ideas and their behavioral manifestation; and, at the domestic level, a broadening of the range of state's motivations for adopting the norm; specifically, the emergence of a new set of both positive and negative international motivations for adopting the norm. These two processes – international institutionalization and motivations broadening – are not only an indication for the existence of an international norm but also the mechanisms that facilitate the further cascading of this norm. These two processes reinforce each other in a positive feedback:

⁴² Some norm scholars use the term diffusion to describe the spreading of an international norm. I avoid this term here since the term diffusion from the natural sciences implies an automatic spread. This notion counters my argument which emphasizes the role of human agency in setting the process of norm emergence and cascading in motion.

the more the norm is institutionalized and spreading the more there is broadening of states' motivations, and vice versa.

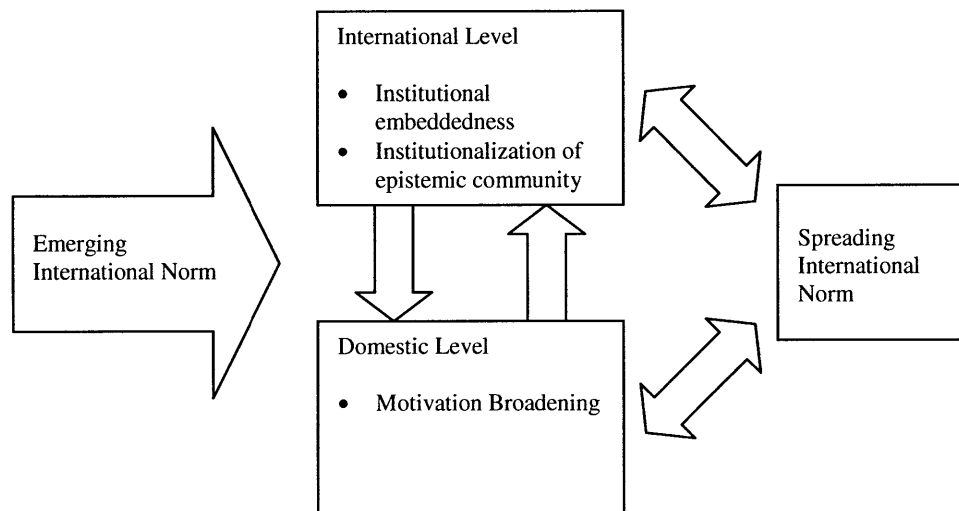


Diagram 2 : Norm Cascading

Intervening Variable II - International Institutionalization

Institutionalization is defined here as a process of social construction in which norms become embedded in existing and new international institutions.⁴³ Differently from alternative definitions that view institutionalization as measurement for the level of international compliance with norm, this definition is more expansive. It embodies the causal proposition that the degree to which norms are embedded in institutions accounts for this norm's strength and continuity.⁴⁴ Accordingly, the proposition I set forward is that the cascading of an international norm not only reflects but also depends on the growing embeddedness of the norm's ideas and behavioral manifestations within existing and new international organizations.

⁴³ John Gerard Ruggie, *Constructing in World Polity : Essays on International Institutionalization* (New York, NY: Routledge, 1998).

⁴⁴ Martha Finnemore and Kathryn Sikkink, "Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics," *Annual Review of Political Science* 4, no. 1 (2001): 407.

The measurement of institutionalization proposed here is also more expansive than the one usually found in the literature. Often, institutionalization implies the official clarification – primarily in international treaties and in international and domestic laws – of what constitutes compliance and/or violation of the norm. Here, I propose going beyond official legal interpretation and focus on the embeddedness of the norm within leading IGOs and NGOs. As was noted earlier in this chapter, international organizations are an important normative agency. International organizations often have specific policy domains, their agenda is publicly known and both their internal activity and their interactions with states can be easily traced. The embeddedness of ideas or norms within existing organizational platforms provides these ideas with the needed official credence and legitimization that facilitates the international spread of these ideas or norms.⁴⁵

International organizations operate as socialization and legitimization agents. In the first place, they provide information, advice, and assistance that guide states to reconstitute their identities and/or interests in line with the new advocated normative agenda.⁴⁶ Second, they either explicitly or implicitly pressure targeted states to adopt new policies. They use both positive and negative incentives, including conditional membership or aid, “shaming,” and sanctions to apply this pressure. Third, international organizations often ally with domestic actors and manage to mobilize and commit those actors to initiate reforms from within the state. Finally, and specifically in the case of new

⁴⁵ Michael Barnett and Martha Finnemore, "The Politics, Power, and Pathologies of International Organizations," *International Organization* 53, no. 4 (1999).

⁴⁶ Martha Finnemore, "International Organizations as Teachers of Norms: The United Nations Educational, Scientific, and Cultural Organization and Science Policy," *International Organization* 47, no. 4 (1993).; Alastair Iain Johnston, "Treating International Institutions as Social Environment," *International Studies Quarterly* 45, no. 4 (2001).

states, the membership in an international organization provides in itself public and visible validation and legitimization of the new regime.⁴⁷

The observable implications of institutional embeddedness are straightforward. In the norm cascading stage one expects to find that leading IGOs and NGOs adopt the norm into their mission-statements, agenda, and recommendations. There will be public statements, policy papers, funding, and overall growing international participation and sponsorship of the process in which the norm is adopted by different states.

An additional and often significant measure for international institutionalization is the ongoing activity of new and unique organizational apparatus that is established for the purpose of promoting a specific norm.⁴⁸ Initially, one is likely to observe that the activities of the epistemic community are increasingly more regulated and frequent. Later, if and when a specific organizational apparatus emerges, it is unlikely to remain static. Accordingly, measures for the norm's institutionalization in the norm cascading stage will include the gradual growth of this organizational apparatus along the following dimensions: more staff and budget; increased worldwide pattern of activity both in terms of overall of quantity of cases and in terms of geographical scope; and, increased cooperation and coordination with other international organizations.

⁴⁷ Jon C Pevehouse, *Democracy from Above: Regional Organizations and Democratization* (Cambridge, UK: Cambridge University Press, 2005).; Kate O'Neill, Jorg Balsiger, and Stacy VanDeveer, "Actors, Norms, and Impact: Recent International Cooperation Theory and the Influence of the Agent-Structure Debate," *Annual Review of Political Science* 7, no. 1 (2004).; John Boli, Thomas, George M. , *Constructing World Culture: International Nongovernmental Organizations Since 1875* (Stanford, CA: Stanford University Press, 1999).

⁴⁸ Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (1998): 899.

Intervening Variable III – States Motivations

The final proposition I set forward focuses on the motivations of states, specifically of states' leaders, to adopt international norms. States' motivations and the conditions that shape them account for which norms spread and how. I propose that at the norm cascading stage we will observe the rise of normative motivations and more significantly the rise of international interest-based motivations. Commonly in the international norms literature, scholars focus on states' motivations for adopting norms as a way to demonstrate or measure the effects of international norms.⁴⁹ I argue that the expansion of motivations also plays an important causal role in the spreading of the norm.⁵⁰ Particularly, the emergence of international interest-based motivations such as international prestige and legitimization strengthen the norm. Accordingly, the norm cascading stage is dominated by rational calculation. These calculations reflect new utilities that have emerged from the changing social context; that is, the norm's spread and the consequent consolidation of new identities and new expectations from states.⁵¹

	Interest-based	Normative-based
Domestic	Gain domestic support and legitimacy Curb and co-opt domestic opposition	The action is inherently good or just
International	International prestige and legitimization International pressure and coercion Expectation for international aid	

Table 1: Motivations for adopting international norms

⁴⁹ Andrew P Cortell and James W David, "How do International Institutions Matter? The Domestic Impact of International Rules and Norms," *International Studies Quarterly* 40, no. 4 (1996).

⁵⁰ John Gerard Ruggie, "What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge," *International Organization* 52, no. 4 (1998)., specifically, p. 869.

⁵¹ Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (1998).

As the table above indicates, I differentiate between normative-based and interest-based motivations and between domestic and international motivations for adopting an international norm.⁵² Normative-based motivations refer to ideas and shared expectations about right or good behavior. Adherence with norms is motivated by a belief that the norm is just and hence ought to be followed.⁵³ Interest-based motivations refer to rational motivations that involve a means-end calculation. In the context of interest-based motivations the most significant is the variation between domestic and international motivations.

Domestic interest-based motivations for social action may in fact be only indirectly related to the international process of norm spread. Accordingly, the international spread of a domestic institutions is the results of a ‘copycat effect’ in which domestic elites are instrumental “rational shopper” that may even manipulate local conditions in order to “fit” borrowed institutions into their own context.⁵⁴ The policy-making elites pursue their own domestic political interests, and their motivations may include the curbing of domestic opposition; the cooptation of domestic groups; and especially in the case of new states – the “lock-in” and legitimization of one’s own regime.

International interest-based motivations for norm adherence may follow both negative and positive means-end logic. According to the negative logic, states adopt norms out of fear of the consequences of defying the norm. States will be motivated for

⁵² The horizontal axis corresponds with March and Olson’s general categorization of motivation for social behavior. James G March and John P Olsen, “The Institutional Dynamics of International Political Orders,” *International Organizations* 52, no. 4 (1998).

⁵³ Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge, UK: Cambridge University Press, 2004), 81. Figure 4.1

⁵⁴ Wade Jacoby, *Imitation and Politics: Redesigning Modern Germany* (Ithaca, NY: Cornell University Press, 2000). Later in this chapter I elaborate more on the “policy borrowing” arguments.

adherence in order to avoid sanctions or may be pressured or even coerced to adopt international norms. According to the positive logic, states adopt international norms in order to signal good intent within international, regional, or even in bilateral settings. Accordingly, states will adhere to an international norm when it coincides with their expectations of gaining the benefits that are embedded in the norm.⁵⁵ These benefits may be tangible, such as access to international aid, or they may be intangible such as gaining international prestige and legitimization and becoming members in a defined group (e.g., group of liberal democracies or group of potential members in the EU).⁵⁶

The motivation for legitimization is also where domestic and international motivations are most likely to converge, particularly for relatively weaker members or new-comers to the international system. In states in transition the new ruling elite is more likely to be insecure about their international status or reputation, and “to be considered legitimate by the international community, [they] have to comply with normative demands of an expanding Western cultural order.”⁵⁷ This motivation is even greater as international legitimization may, at the same time, enhance the domestic legitimization of the new regime.

In general, states adopt norms for both interest-based and normative-based motivations, as well as a combination of the two types of motivations. Yet, the study of international norms is greatly biased towards rational-negative motivations such as

⁵⁵ Gary Goertz, *International Norms and Decision Making: A Punctuated Equilibrium Model* (Lenham, MD: Rowman & Littlefield Publishers Inc., 2003).

⁵⁶ Inis L. Jr. Claude, "Collective Legitimization as a Political Function of the United Nations," *International Organization* 20, no. 3 (1966).

According to Thomas Frank, legitimacy is defined as the ability to exert compliance voluntarily. It is expressed in acts of symbolic validation within a community. Thomas M Frank, *The Power of Legitimacy Among Nations* (Oxford, UK: Oxford University Press, 1990).

⁵⁷ Brian Rob Fletcher, "International Elections electioneering and the Spread of the norm of free and fair elections: 1989-1988" (PhD Dissertation, University of Wisconsin – Madison, 2000), 5.

sanctions, and towards tangible rational-positive motivations such as international aid. There is by far less attention to the intangible utility embedded in norms. This is an undesirable omission since it is precisely this type of motivations that account for the cascading of international norms. Once a behavioral practice is institutionalized and gains wide international attention, we should expect that a growing number of states will want to adopt the international norm in order to gain the intangible benefit – prestige and legitimization – embedded in this norm. Accordingly, the change in states' motivations is endogenous to the process of norm cascading. International norms have self-perpetuating mechanism in the sense that the process of their own institutionalization leads to the emergence of new international motivations, which in turn reinforce and strengthen the norm.

The main observable implication for this proposition is that there will be mostly domestic interest-based motivations in the in earlier cases of states that adopt the practice associated with the norm. As the norm is institutionalized we expect to find that international interest-based motivations would play a more significant role in states' decision-making to adopt the norm. These motivations, in turn, shape the rate and scope by which the norm is adopted by additional states. Ideally, one would compare the decision-making process and the expressed motivations between early and late cases that are similar in their initial conditions. Since the process of motivation change proposed here is closely linked to the institutionalization of the norm, we would also expect to find: A) indications for the influence of the epistemic community on decision-makers and on the decision-making process; and B) indications that the content change has made the decision to adopt the norm's practice easier or more desirable.

Three Alternative Explanations

So far I have considered several competing explanations that pertained to each of the specific propositions of my model. There are three alternative explanations that pertain to my theory as a whole and deserve some additional attention. What these alternative explanations share is the notion that the international spread of domestic practices has little to do with a normative process at the international level. Instead, it is the interests and actions of powerful states, the innate qualities of the spreading practice, or domestic “demand-driven” forces, which account for this spread.

The first alternative explanation could be termed as a Realist or power-based explanation. Accordingly, what is referred to as international norms reflect the political and economic interests and the domestic values of strong states in the international system and particularly the hegemon.⁵⁸ The domestic practices of great powers spread internationally largely due to the influence of power or coercion. Empirically, most, if not all, of the phenomena that have been identified as international norms have been congruent with the current distribution of power in the international system. This has added support to the proposition that even if power factors are not sufficient they are at least necessary for explaining the international spread of domestic practices as international norms. One way of controlling for power-based effects has been to analyze cases in which the normative imperatives of the internationalization of domestic practices run counter to the political and economic interests of great powers. However, these cases are hard to find and the “burden of proof” in this type of empirical tests has been weak

⁵⁸ Audie Klotz, *Norms in International Relations: The Struggle Against Apartheid* (Ithaca, NY: Cornell University Press, 1995), 21-27.

and widely contested. A different way for testing this proposition is to select a case where the supposed necessary condition of power is absent. As I elaborate in the following section, I address this requirement by selecting the case of the truth-seeking norm.

The second alternative explanation comes from the ideational literature in comparative politics. Ideational changes are attributed to dissatisfaction with current belief structure. New ideas or norms emerge following an exogenous shock or sub-optimum equilibriums or in an incremental process in which old ideas are de-legitimized and replaced. These ideas and norms spread internationally largely due to their innate characteristics, particularly because they are efficient.⁵⁹ One way to test this proposition is to present a case where a practice or norm spreads internationally even though it is mediocre, that is, there is consensus or at least wide acknowledgment that this practice is inefficient or even has negative consequences. This type of test is usually hard to come by. However, as the empirical puzzle I presented earlier in my introduction demonstrated, the international spread of truth commissions approximates this requirement.

The final alternative explanation stresses domestic “demand-driven” sources of international phenomena. Accordingly, what is referred to as an international norm reflects an aggregation of discrete domestic practices which are imitated worldwide. The literature on institutional transfer proposes several accounts for international imitation. The first explanation focuses on convergence, which is driven by larger structural forces that yield similar domestic institutional developments (e.g., modernization theory). The

⁵⁹ These arguments are common in the study of economic ideas and institutions. For example, Peter Hall explains the shift into Keynesianism by the “shock” of the Great Depression and Kathleen McNamara explains the decline of Keynesianism by the “shock” of the 1970s Oil Crisis. Peter A Hall, ed., *The Political Power of Economic Ideas: Keynesianism Across Nations* (Princeton, NJ: Princeton University Press, 1989).; Kathleen McNamara, *The Currency of Ideas: Monetary Politics in the European Union* (Ithaca, NY: Cornell University Press, 1998).

second explanation focuses on diffusion, which implies an almost “automatic” copycat process driven largely by uncertainty. More recent explanations focus on the dynamic of domestic politics and the political interests of the domestic political elite. One particularly strong force pushing towards domestic policy-borrowing is the demands of local civil society and the pressure they apply on the domestic political elite.⁶⁰ On this point, the domestic and international explanations tend to converge. Many international norm explanations, including mine, emphasize the role of domestic civil society and its cooperation with international NGOs in spreading international norms.⁶¹ At the bottom line, the difference between domestic “demand-level” explanation and my own international “supply-driven” explanation is a matter of degree. At the same time, however, they differ in where they identify the origins of the causal process. For domestic explanations, norm emerges initially by aggregation. In my explanation, on the other hand, the norm emerges at the international level as a distinct process. In light of the similar dynamic, counterfactuals are the best way to ascertain whether it is domestic-demand or international forces that better explain the emergence and the worldwide spread of a new phenomenon. Accordingly, in my empirical analysis I will ask whether one would see the same scope and type of the phenomenon without the international agency, mechanisms, and processes that my model specifics.⁶²

⁶⁰ Wade Jacoby, *Imitation and Politics: Redesigning Modern Germany* (Ithaca, NY: Cornell University Press, 2000).

⁶¹ Keck and Sikkink term this convergence as the “boomerang effect.” Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998).

⁶² Gary Goertz and Harvy Starr, “Introduction: Necessary Condition Logics, Research Design and Theory,” in *Necessary Conditions: Theory, Methodology, and Applications*, ed. Gary Goertz and Harvy Starr (Lanham, MD: Rowman & Littlefield, 2003).

Methodology

This project analyzes a single case study in order to probe the plausibility of the proposed theory for the emergence and spread of an international norm. Some have argued that the selection of one case study makes general inferences about a theoretical framework problematic.⁶³ This study accepts that there are important limitations to the examination of one case, yet it builds on the substantial scholarship that defends a methodology based on a single case study.⁶⁴ Specifically, I follow what Harry Eckstein calls disciplined application, according to which the careful analysis of a single case may generate suggestions for refining and improving the theory.⁶⁵ Since I focus on a single case my propositions are formulated in terms of necessary or permissive conditions.⁶⁶ However, each of these propositions as well as their combined operation is not necessarily sufficient for norm emergence nor do they explain all ways in which norms emerge. In terms of explanatory power, therefore, my goal is modest and I aspire for no more than contingent generalization. At the same time, I propose a causal explanation that identifies the conditions and the processes that make international norms possible or even probable.

⁶³ Gary King, Robert O Keohane, and Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research* (Princeton New Jersey: Princeton University Press, 1994).

⁶⁴ Harry Eckstein, "Case Study and Theory in Political Science," in *Handbook of Political Science*, ed. Fred I Greenstein and Nelson W Polsby (Reading, MA: Addison-Wesley, 1975).; Stephen Van Evera, *Guide to Methods for Students of Political Science* (Ithaca, NY: Cornell University Press, 1997).; Bent Flyvberg, *Making Social Science Matter: Why Social Inquiry Fails and How It Can Succeed Again*, trans. Steven Sampson (Cambridge, UK: Cambridge University Press, 2001).; Alexander L George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, MA: MIT Press, 2005).

⁶⁵ Harry Eckstein, "Case Study and Theory in Political Science," in *Handbook of Political Science*, ed. Fred I Greenstein and Nelson W Polsby (Reading, MA: Addison-Wesley, 1975).

⁶⁶ Gary Goertz and Harvy Starr, "Introduction: Necessary Condition Logics, Research Design and Theory," in *Necessary Conditions: Theory, Methodology, and Applications*, ed. Gary Goertz and Harvy Starr (Lanham, MD: Rowman & Littlefield, 2003).

Many studies of international norms identify the empirical expression of norms through observable social practices and institutions. In particular, compliance and sanctions are a strong indication for norms. I, on the other hand, do not assume that since there is a behavioral regularity there is a norm behind it.⁶⁷ While I use some descriptive statistics to assess the scope and changes in the practice of truth commissions across time, the greater part of the empirical data I analyze are speech and written evidence. I use a “thick description” of the normative ideas attached to the behavioral regularity and of the ways they are being expressed. The logic is that since norms are collective, or intersubjective, then we should find evidence of shared moral assessment in the discourse or rhetoric that precedes behavior.⁶⁸

I use a genealogical approach of process-tracing, which is particularly useful for uncovering the process in which shared moral assessments originate and change over time. Genealogy is a method specifically concerned with interpreting the origins and changes of moral interpretations by tracing the processes and procedures in which truth, knowledge and beliefs are produced and become widely accepted.⁶⁹ It traces how particular discourses are historically constituted and how they change while consequently changing social practices. Also, genealogy does not assume that present practices are necessarily the outcome of rationally inevitable trends; instead, it emphasizes the important role of contingent turns in history. This dissertation lays out a narrative – a

⁶⁷ Ibid., 23.

⁶⁸ Annika Bjorkdahl, "Norms in International Relations: Some Conceptual and Methodological Reflections," *Cambridge Review of International Affairs* 15, no. 1 (2002): 13.; Audie Klotz and Cecelia Lynch, *Strategies for Research in Constructivist International Relations* (New York, NY: M.E. Sharpe, 2007), 19.

⁶⁹ Richard Price, "A Genealogy of the Chemical Weapons Taboo," *International Organization* 49, no. 1 (1995): 86.

story – that orders the events in question into a coherent sequence and highlights the historical contingencies that explain the causality of these events.⁷⁰

Genealogy seeks to identify how debates and contending views change their meanings over time and how actors frame and legitimize certain practices.⁷¹ The focus on human agency is particularly suitable to my proposition that the epistemic community has a critical role throughout the whole process of norm emergence. The epistemic community constructs new meanings for state leaders about what are the desirable outcomes and what are the proper strategies to achieving these outcomes.⁷²

The relevant primary sources I analyzed include archives of intergovernmental and non-governmental organizations, printed public media, statements and memoirs of key individuals, and interviews. A “snowball” technique, which follows the recommendation of key interviewees, has been useful in identifying additional interviewees as well as other key written sources. The primary sources were supplemented and contextualized through secondary materials.⁷³ In order to establish the validity of my empirical sources and of my interpretation I gathered a variety of sources and checked them one against the other.

⁷⁰ Daphne Meadmore, Caroline Jatcher, and Erica McWilliam, "Getting Tense about Genealogy," *International Journal of Qualitative Studies in Education* 13, no. 5 (2000).; Martha Finnemore and Kathryn Sikkink, "Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics," *Annual Review of Political Science* 4, no. 1 (2001): 394.

⁷¹ Audie Klotz and Cecelia Lynch, *Strategies for Research in Constructivist International Relations* (New York, NY: M.E. Sharpe, 2007), 31.

⁷² Ervin Goffman, *Frame Analysis* (New York, NY Harper, 1974).; David A Snow, "Ideology, frame resonance, and participant mobilization," in *International Social Movement Research*, ed. Bert Klandermans, Hanspeter Kriesi, and Sidney Tarrow (Greenwich CT: JAI Press, 1988).

⁷³ Audie Klotz and Cecelia Lynch, *Strategies for Research in Constructivist International Relations* (New York, NY: M.E. Sharpe, 2007), 19.

Case selection: Why the truth commissions' case is a good case?

In the first place, the spread of truth and reconciliation commissions provides a unique opportunity for studying a norm as it emerges. It is not every day that new international norms emerge and spread; therefore, the novelty of truth commissions and of the truth-seeking principle they embrace makes this case in itself a case worth studying.⁷⁴ Since this case is contemporary, it provides access to rich empirical data and specifically the abundance of web-based resources, which reveal the debates surrounding the truth-seeking principle. In addition, this case makes it possible to interview the people who were the key players in constructing this norm.

Beyond the novelty and the intrinsic interest of this case there are two other methodological criteria for selecting the case of the truth-seeking norm. In the first place, this case provides intrinsic control for power-based explanations for norms and allows to better focus on the net persuasive power of the normative ideas embedded and associated with this practice (that is, the content of the norm). By and large, the study of international norms focuses on norms emerging within and diffusing from dominant members in the international system. For example, the cases of anti-slavery, women's electoral rights, and other human rights norms all emerged as domestic practices within strong powers in the international system and spread to the international periphery reaching their universal status. Naturally, these norms and the process by which they spread mostly reflect the political and economic interests and influences of these dominant states as well as their morality and values. As result, it is often difficult and perhaps impossible to control for or nullify the argument that norms spread due to the

⁷⁴ On the uniqueness of truth commissions and on why selecting them out of all other transitional justice mechanisms see Chapter 3.

influence of power or coercion. This difficulty poses an inherent challenge for those arguing for the independent role of norms in world politics.

The truth-seeking principle is without a doubt rooted in the ideas and normative values of the powerful West. Still, the practice of truth commissions began and is still mostly occurring within the international periphery. Therefore, this case minimizes the potential effects of power relations and/or coercion on the emergence and spread of norms and leaves room to study the ideational and normative process per-se. The practice of truth commissions does not carry substantial tangible sanctions for defiance, nor is it usually enforced from above by states. Therefore, this case is better suited for the study of positive international motivations, that is, the motivations for international prestige and legitimacy as opposed to effects of coercion and the fear of international sanctions. This creates more room to explore my proposition that the introduction of positive international motivations is one of the mechanizing accounting for the spread of international norms.

The final selection criterion refers to the potential contribution of this case to theory-building. As I observed in the introduction, the empirical puzzle the spread of truth and reconciliations commissions poses is that they are being widely prescribed while there is little knowledge and next to no consensus about their long-term consequences and likelihood of success. I noted that even in the supposedly successful case of the South African TRC there have been serious doubts about the actual effects of the commission on the transition process and on reconciliation specifically.⁷⁵ Skeptics

⁷⁵ See Chapter 1, fn. 6.

In terms of psychological effects of the TRC, the findings about the healing effect of the public hearings are at best inconclusive, see Marietjie M Allan, "The South Africa truth and reconciliation commission as a therapeutic tool," *Behavioral Sciences & the Law* 18, no. 4 (2000).

about the long-term consequences of truth commissions also cite earlier cases such as those of Argentina (1983) and Chile (1990), where the truth commission was supposed to “finalize the contested past” and failed to do so.⁷⁶ In Germany, where the truth commission was considered a success in terms of collecting information about the past and providing a public forum for compelling testimonies, there are now claims that the resulting narrative was a mere compromise that “bore only partial resemblance to historical reality and ... probably did more to impend inter-German understanding than further it.”⁷⁷ Some critics point out that truth commissions, and their main principal of public truth-telling and in particular its assumed therapeutic and reconciliatory effects, are a product of Western culture that may not travel well across different cultural contexts.⁷⁸ For example, anthropologist Rosalind Shaw argued that in the cultural context of Sierra Leone, truth-telling runs counter to reconciliation and may promote resorting back to violence instead.⁷⁹

In view of how highly contested the positive effects of truth commissions are and yet how widespread the practice is, this case of qualifies as a ‘mediocre norm’ that meets the criteria of a theory-confirming case study.⁸⁰ By and large, the norm literature in

⁷⁶ Alison Brysk, *The Politics of Human Rights in Argentina: Protest, Change, and Democratization* (Stanford, CA: Stanford University Press, 1994).; Elin Skaar, "Human Rights Violations and the Paradox of Democratic Transitions: A Study of Chile and Argentina. CMI Report R 1994:5," (Bergen, Norway: Chr. Michelsen Institute, 1994).; Luis Rongier and Mario Szanjder, *The Legacy of Human Rights Violation in the Southern Cone: Argentina, Chile, and Uruguay* (Oxford, UK: Oxford University Press, 1999).

⁷⁷ A. James McAdams, *Judging the Past in Unified Germany* (Cambridge, UK: Cambridge University Press, 2001), 20.

⁷⁸ Claire Moon, *Narrating Political Reconciliation: South Africa's Truth and Reconciliation Commission* (Lanham, MD: Lexington Books, 2008).

⁷⁹ Rosalind Shaw, "Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone. Special Report 130 " (Washington DC.: United States Institute of Peace, 2005).; Tim Kelsall, "Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone," *Human Rights Quarterly* 27, no. 2 (2005).

⁸⁰ John S Odell, "Case Study Methods in International Political Economy. working papers," in *International Studies Association, 41st Annual Convention* (Los Angeles, CA: 2000). According to Odell, if a case is selected as a probability probe, (that is, initial testing of the theory's causal mechanisms which

international relations has focused on the spread of “good” norms; that is, normative principles and practices that there is little apparent disagreement about their positive outcomes. The fact that the truth-seeking norm spreads in spite of widespread doubts and criticisms makes it a harder case for my theory of norm emergence and spreading. By itself this case will not prove or disprove my theory; however, if the theory is valid for explaining the emergence and spread of a mediocre norm this provides support for the inference that this theory would be able to explain other less-contested cases of international norms.

does to intend on making strong claims) one may even select a case that is not especially difficult for the theory, or even a case whose circumstances are thought to be favorable to the theory.

Chapter 3

Sprouting Like Mushrooms after a Rain: The Definition and Scope of the “Truth-Seeking” Phenomenon

Truth-seeking commissions are only one of several strategies for coping with past record and legacy of human rights violations. These strategies, or modes of accountability as they are sometimes termed,¹ include: purges, vetting and lustrations; reparations and compensation schemes; criminal prosecution; truth-seeking commissions; revisions of national-historical narratives; official apologies; and, public commemoration. Scholars and practitioners of transitional justice commonly aggregate these strategies under the label of transitional-historical justice mechanisms. While these mechanisms share a lot in common, they are qualitatively different. Each emerged and developed, both by theory and in practice, within different historical contexts.

Why then this project focuses exclusively on truth-seeking commissions? The answer to this question is not trivial and merits an explanation. In order to substantiate the selection of truth-seeking commissions, I position truth-seeking commissions within the broader phenomenon of transitional-historical justice by proposing a typological framework that differentiates between truth-seeking commissions and the other mechanisms.² The typology makes a distinction between individual and collective mechanisms and between retributive and restorative mechanisms. A further distinction is

¹ John Borneman, "Events of Closure, Rites of Repetition: Modes of Accountability," in *Settling Accounts? Truth, Justice and Redress in Post-Conflict Societies* (Weatherhead Center for International Affairs, Harvard University: 2004).

² At this point the qualitative distinction between truth-seeking commissions and other historical or transitional justice mechanisms is taken as given. Later chapter (specifically chapter 6) focuses on how these distinctions were constructed, both in theory and practice, in the process during which truth commissions became an international norm.

being made between modes of accountability adopted by mature, or well-established, democracies and those adopted by democratizing states. While all transitional-historical justice mechanisms address the legacy of past human rights violations, these three distinctions set them apart, and single truth-seeking commissions as a *restorative* mechanism that embodies the directed effort by *democratizing* states to accept responsibility for historical injustices by means of publicly acknowledging *collective* harm and recognizing *collective* guilt.

The second part of this chapter describes and assesses the international scope of truth-seeking commissions. Using my own ‘universe of cases’ of all truth commissions between 1974 and 2006 I identify general geographical and temporal trends in their worldwide proliferation. An important caveat is in place. As was presented in the previous chapter, the definition of an international norm used here departs from the rationalist definitions of a norm as a behavioral regularity. In itself, therefore, the repeated and growing practice of truth commissions by no means validates the existence of a truth-seeking norm or any other of the model’s hypotheses. It does, however, provide some initial empirical indication that the practice of truth-seeking commissions has been significantly growing and that we are indeed witnessing a worldwide phenomenon. The data also reveals growing international involvement in the initiation and operation of truth commissions as well as changes in the stated goals of truth commissions.

Modes of Accountability: A Typological Framework

The different practices of transitional and historical justice share common characteristics and overlap in many of their goals. Scholars and practitioners presently acknowledge this overlap and no longer consider them to be distinct, but rather as

complementary.³ Nevertheless, for both analytical and practical purposes there are two important dimensions in which these mechanisms are qualitatively different. The first distinction is between their targeted goals: whether it is the individual – victims as well as perpetrators; or the collective – that is, the community as a whole. The second distinction is between retributive and restorative forms of justice.⁴

	Retributive	Restorative
Individual	Purges/vetting/lustration Trials/Prosecution	Reparations / Compensation Restitution of property, employment, and status
Collective	Lustration	Reparations Truth Commissions Apologies Historical-Narrative Revisions Public Commemoration

Table 2: Modes of Accountability

Individual / Collective Modes of Accountability

Vetting and lustration, criminal prosecution, monetary reparations, and the restitution of property, employment, and status are all modes of accountability that name either perpetrators or victims and punish or restitute them respectively. While these mechanisms undeniably have a cumulative societal effect, they are primarily directed at

³ Naomi Roht-Arriaza, "The new landscape of transitional justice," in *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge, UK Cambridge University Press, 2006).

⁴ The retributive / restorative distinction is in itself a recent construction. Chapter 6 discusses how this distinction emerged and how it affected the spreading of truth-seeking commission. For now, however, these categories are considered in the way in which they are commonly referred to in the literature.

specific individuals.⁵ The other – collective – modes of accountability assume that the violence and abuses disrupted not only the life of specific individual but also social texture, thereby offering redress for society as a whole.⁶

The notion that accountability and redress ought to be sought at the societal level is relatively new. Its origins can be traced to the German experience post WWII. While initially the Nuremburg trials and the Allies Denazification program individualized accountability, it was later widely acknowledged that the legacy of Nazi atrocities impinges on almost every aspect of German society and politics. During the mid-1960s Germans began grappling with this legacy.⁷ German public discourse reflected the duality between being victims of the Nazi regime while being its accomplices. This dual status could not have been addressed by the individualization of either victimhood or criminality. Instead, it gave way to the notion that the German society as a whole needed to deal with its past as a way to move forward.

The notion of German collective accountability was an unintended development that resulted from public discourse. Later, however, the German experience became the point of reference in developing the rationale that supported collective mechanisms of transitional justice.⁸ In particular, it set forward the rationale that one of the primary goals of these collective mechanisms is to establish a narrative that embodies accountability for

⁵ Monetary reparations are sometimes applied collectively. Germany, for example, paid the State of Israel three billion marks, which were invested in the infrastructure of the new state. While this was collective reparations scheme, it was closely linked to the general individual-based reparations program and the State of Israel was paid as the legal heir of Holocaust victims that perished.

⁶ Rama Mani, *Beyond Retribution: Seeking Justice in the Shadow of War* (Cambridge, UK: Policy Press, 2002), 173.

⁷ Daniel Levy, "The Future of the Past: Historiographical Disputes and Competing Memories in Germany and Israel," *History and Theory* 38, no. 1 (1999).

⁸ Daniel Levy and Natan Sznaider, "Memory Unbound: The Holocaust and the Formation of Cosmopolitan Memory," *European Journal of Social Theory* 5, no. 2 (2002).

past events, making it part of the new political community's collective memory and political culture.

Retributive / Restorative Modes of Accountability

Retribution is the oldest form of justice. It reflects victims' desire for retaliation or revenge, which some view as an instinct ingrained in human nature.⁹ Retributive justice can be either judicial or non-judicial and may include a range of practices including: execution; prison sentences; fines; demotion or dismissal from public service; loss of citizenship; ineligibility for certain offices; and the confiscation of property and profits.¹⁰ Practiced by the state, retribution is a form of institutionalized and procedural revenge aimed at performing justice. Sometimes termed retroactive justice, this approach is offender-centric and backward-looking; holding to the normative principle that wrongdoers deserve to be punished and that there should be at least an 'ordinal' match between crime and punishment.¹¹

In addition to the normative principle, retribution serves in the interest of social and political stability. First, it impairs or removes those individuals that might have had both the will and the power to harm the transition process and the new state. Second, retribution serves as a deterrent from future transgression. Finally, by clearly renouncing the acts of the previous regime as crimes, the new regime enhances its own legitimacy.

Restorative justice is a victim-centric forward-looking approach, "which is concerned not so much with punishment as with correcting imbalances, restoring broken

⁹ Neil Vidmar, "Retribution and Revenge," in *Handbook of Justice Research in Law*, ed. Joseph Sanders and V. Lee Hamilton (New York, NY: Kluwer Academic Publishers, 2002).

¹⁰ Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge, UK: Cambridge University Press, 2004), 126-127.

¹¹ Jamie Malamud-Goti, "Transitional Governments in Breach: Why Punish State Criminals?," in *Transitional Justice*, ed. Neil J Kritz (Washington DC.: United States Institute of Peace, 1995).

relationships – with healing, harmony, and reconciliation.”¹² This approach originally developed in the United States’ domestic criminal system mostly in the context of dealing with young offenders. It emerged out of the dichotomy between the punitive justice paradigm and the treatment model that emphasizes rehabilitation. Instead of the simplistic choice between hurting or helping offenders while not taking into account the needs of the whole community, restorative justice seeks to build communication and connections between offenders and victims, thereby reintegrating offenders into the community and restoring the victim’s sense of personal autonomy.¹³

Accordingly, restorative justice brings victims back into the process of justice and emphasizes a process of dialogue and deliberation between victims and offenders while assigning active role to community members and organizations in this process. The primary goal is not only to reintegrate offenders but also rebuild a community and reestablish civic legitimacy and accountability.¹⁴ Moreover, communicating and dealing with crimes in an inclusive and public way broadens the conception of justice. Accordingly, the restorative process aims at a just society by calling attention to the conditions that underline criminality and cause social conflict. In doing so the process of seeking justice becomes a process of social and cultural change.¹⁵

The difference between restorative and retributive justice is not only that the first restores while the second punishes, but that restorative justice places greater emphasis on

¹² Elizabeth Kiss, "Moral Ambition Within and Beyond Political Constraints: Reflections on Restorative Justice," in *Truth Vs. Justice*, ed. Robert I Rotberg and Dennis Thompson (Princeton, NJ: Princeton University Press:2000, 2000), 69.

¹³ Gordon Bazemore, "Restorative Justice and Earned Redemption: communities, victims, and offender reintegration," *American Behavioral Scientist* 41, no. 6 (1998).; Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Scottsdale, PA: Herald Press, 1990).

¹⁴ Jim Consedine and Bowen Helen, eds., *Restorative Justice: Contemporary Themes and Practice* (Lyttelton, New Zealand: Ploughshares Publications, 1999).

¹⁵ Gordon Bazemore, "Restorative Justice and Earned Redemption: communities, victims, and offender reintegration," *American Behavioral Scientist* 41, no. 6 (1998).

accountability, including collective accountability, while making the process of justice more consensual, transparent, and constructive.¹⁶ In transitional settings, reparations and compensation programs exemplify the principle of placing victims at the center of the justice process, restoring their personal dignity and autonomy as the state, on behalf of the community, is being held accountable and publicly acknowledges the victims' past injustice.

To conclude, collective-restorative mechanisms of historical and transitional justice (indicated in bold in the bottom right cell of the table above) include practices that embody the directed effort by the political community (states) to accept responsibility for historical injustices by means of publicly acknowledging guilt and recognizing harm. These practices – truth commission, official apology, historical narrative revision, and public acts of commemoration – represent the broader conception of justice embedded in the restorative justice approach; that is, the goal of initiating social change and moving forward towards a just society.

In order to substantiate the selection of truth-seeking commissions as the focus of this research, the following section presents a brief review of transitional-historical justice practices. The review presented here is by no means a comprehensive literature review of the transitional justice literature. Instead, the goal is more modest: I seek to position truth-seeking commissions within the broader phenomenon of transitional-historical justice. Using the categories of the typology I proposed above I demonstrate their commonalities with other mechanisms while highlighting their distinctiveness.

¹⁶ Albert W Dzur, "Restorative Justice and Civic Accountability for Punishment," *Polity* 36, no. 1 (2003).

Practices of Transitional-Historical Justice

For the numerous observers and scholars that have noted the growing trend of states reckoning with their legacy of widespread human rights abuses, the most common way to aggregate this phenomenon is under the term transitional justice. Ruti Teitel, the legal scholar who is accredited with coining this term, defines transitional justice as “a conception of justice associated with periods of *political change*, characterized by *legal responses* to confront wrongdoings of repressive predecessor regime.”¹⁷ This definition, while often-cited, has two major shortcomings in accounting for the full scope of the “dealing with the past” phenomenon. First, transitional societies are only a subset, albeit a significant one, of the cases in which there is an official process of reckoning with past atrocities. Both in theory and practice, political change is neither necessary nor sufficient condition to the application of the conception of justice that emphasizes redress for past injustices. Second, this definition is biased towards legal mechanisms; therefore, omits and downgrades the role of non-judicial practices and forms of justice that have gained saliency within this phenomenon.¹⁸

There, I propose a broader definition for transitional or historical justice. It is a range of practices that address the pervasive negative psychological, social, and political effects of past injustices (usually involving human rights violations) committed by the state or in the name of the state and that aim to amend these effects in order to establish

¹⁷ Ruti G Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Journal* 16 (2003): 69. Italic added.

¹⁸ Naomi Roht-Arriaza, "The new landscape of transitional justice," in *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge, UK Cambridge University Press, 2006), 1.

the rule of law, democracy, peace, reconciliation, and respect for individual and collective rights, either domestically and/or internationally.¹⁹

This definition is more comprehensive in accounting for the full scope of this phenomenon as it emphasizes the multiple effects of past abuses both for individuals and collective, as well as the multiple positive goals that are associated with the process of redress. What is more, this definition encompasses not only cases of transitions from domestic political repression but also cases of intra- and inter-state conflicts, where this conception is applied. Finally, this definition reflects the notion that transitional justice is not a single monolithic conception or practice of justice but rather an aggregation of practices that are connected by the shared concern over “the problem of what to do about the past.”²⁰

The practices of transitional justice include: purges, vetting and lustration; reparation and compensation schemes; trials; truth-seeking commissions; revisions of national-historical narratives; official apologies; and, public commemoration. While all these practices are dedicated to the remedying of past injustices, the goals each practice prioritizes are different, and so are the relative strengths and weaknesses associated with each. In reviewing these practices below I take a functionalist and positivist stance. It is functionalist in the sense that it is focusing on the specific tasks and goals that each of these mechanisms is designed and assumed to fulfill. It is positivist in the sense that it

¹⁹ This definition partially follows the definition of transitional justice by political scientist Louis Bickford. Bickford’s definition reads: “Transitional justice refers to a range of approaches that societies undertake to reckon with legacies of widespread or systematic human rights abuse as they move from a period of violent conflict or oppression towards peace, democracy, the rule of law, and respect for individual and collective rights.” Louis Bickford, “What is Transitional Justice?,” in *Encyclopedia of Genocide and Crimes Against Humanity* (Macmillan Reference USA, 2004).

²⁰ Timothy Garton Ash, “Preface to Priscilla B. Hayner,” in *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, NY: Routledge, 2001).

attempts to describe, rather than evaluate, the different mechanisms in the way they are generally presented in policy and theory.

Purges, Vetting, and Lustration

Political purges, that is, the removal of people associated with the previous regime from positions of power, are historically the most common transitional practice.²¹ Historically, political purges were directed towards the previous political and military leadership and government bureaucrats who are being dismissed from public office or employment or exclude from holding public positions in the future. In the twentieth century the practice of purges has been expanded, first notoriously by the Stalinist regime and later in the entirely different context of the post-WWII purges, so that purges included not only those associated with the former political administration and military but also members of other sectors of society, such as artists, scientists, teachers, and members of the media, all of which are regarded as collaborators with the former regime.²²

²¹ In the Roman Empire it was a common practice to forcefully and brutally oust people loyal to the previous rulers, see Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge, UK: Cambridge University Press, 2004).

²² Ruti G Teitel, *Transitional Justice* (New York, NY: Oxford University Press, 2000), 162.

The Stalinist purges ("The Great Purge") took place in the 1930s. It refers to the killing, imprisonment, expulsion, and removal from political, social, and military positions of millions of people in the Soviet Union who were charged of being disloyal to the Communist Party and the Soviet state. Robert Conquest, *The Great Terror: A Reassessment* (New York, NY: Oxford University Press, 1990).

After WWII the Allied forces made purges their official policy in Germany and Austria. Termed Denazification, the goal of this policy was to remove people associated with the previous Nazi regime from their positions in politics, the judiciary, the economy, and culture. Tom Bower, *The Pledge Betrayed: American and Britain and the Denazification of Post-War Germany* (Garden City, NY: Doubleday, 1981).; Perry Biddiscombe, *The Denazification of Germany, 1945-1948* (Gloucestershire, UK: NPI Media Group, 2006).

Purges were also practiced widely in other European countries, including Belgium, France, and The Netherlands. In The Netherlands, for example, all members of pro-German military movements and their spouses, which amounted to tens of thousands of people, automatically lost their Dutch citizenship. See, Luc Huyse, "Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past," *Law and Social Inquiry* 20, no. 1 (1995): 62.

The current use of the term lustration, which is derived from the Latin word for “purification, reflects the rationale of these measures, which is to “purify” the state’s administrative organization and society as whole from the “sins” committed under the former regime; thereby, establishing a practical and psychological break from the past.²³ Many Central and Eastern European countries (including, Albania, Bulgaria, Estonia, East Germany, Czech Republic, Hungary, Poland, and Romania) adopted in the early 1990s some form of lustration measures as part of their transition from communism to democracy.²⁴ Lustration, as opposed to criminal prosecution, deemed proper in these cases since the human rights abuses were systematic, performed by the states’ bureaucracies, and for which a significant portion of the population might have been implicated.²⁵

Often, the lustration process begins with a commission of inquiry aimed at identifying and publicly exposing collaborators and officials of the former communist regime. In the former Czechoslovakia, for example, the names of collaborators were broadcasted on public television in a sort of a “social condemnation” ritual.²⁶ Measures may end with the public exposure, as was the case in Poland in 1992, or may include

Later in the twentieth-century, following the recommendation of the Commission for the Truth in El Salvador (1992), the country established a special Ad Hoc Commission, which goal was to vet and remove senior military and governmental officers. Ian Johnston, *Rights and Reconciliation: UN Strategies in El Salvador* (Boulder, CO: Lynne Rienner, 1995), 33.

²³ Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston, MA: Beacon Press, 2000), 136.

²⁴ John P Morgan, "Communist Torturers of Eastern Europe: Prosecute or Punish or Forgive and Forget," *Communist and Post Communist Studies* 27, no. 1 (1994).; Roman Boed, "An Evaluation of the Legacy and Efficiency of Lustration as a Tool of Transitional Justice," in *Post-Conflict Justice*, ed. M. Cherif Bassiouni (Ardsey, NY: Transnational Publishers, Inc., 2002).

More recently, lustration was also adopted as US policy in Iraq under the name of de-Baathization, that is, the removal of people associated with the Baath party from official positions in the state’s administration and politics.

²⁵ Helga A Welsh, "Dealing with the Communist Past: Central and East European Experiences after 1990," *Europe-Asia Studies* 48, no. 3 (1996).

²⁶ Ruti G Teitel, *Transitional Justice* (New York, NY: Oxford University Press, 2000), 171.

various degrees and scope of employment bans, such as was the case in East Germany following the unification where tens of thousands of civil employees were removed from office.²⁷

Lustration is a punitive, that is, retributive measure, which while often applied collectively by way of a universal legislation, is premised individual non-criminal accountability for either actively or tacitly participating in or supporting the human rights violations of the former regime. In the process of democratic transition, lustration provides a safeguard for the new democratic order by minimizing the public influence of former officials or collaborators that otherwise might have used their power positions to sabotage the democratization process. Furthermore, lustration facilitates the legitimacy of the new regime by discrediting the old regime and marking a clear departure from its people and practices.

Lustrations have been criticized on practical, legal, and moral grounds. Critics point out that this measure carries the risk of being exploited by politicians who would use lustrations to undermine the legitimacy of political opponents.²⁸ Also, the removal from office of numerous civil servants and other skilled professionals may hinder the ability of the new state to function, particularly during the turmoil of transition, when these experienced professionals are most needed.

Legal critics have argued that those individuals, who have worked in states' bureaucracies, have in fact abided the laws of their states and are being punished for acts

²⁷ Charles C Bertschi, "Lustration and the Transition to Democracy," *East European Quarterly* 28, no. 4 (1994). In Poland previous collaborators were not barred from working; however, they were identified widely in the press and it was left to the electing public to decide the future of their political career. This process led, for example, to Prime Minister Olszewski losing the elections in 1992.

²⁸ For example, during the 2000 electoral campaign in Poland, both presidential candidates, Lech Walesa and Alexander Kwasniewski, were accused of collaboration. Helga A Welsh, "Dealing with the Communist Past: Central and East European Experiences after 1990," *Europe-Asia Studies* 48, no. 3 (1996).

that are defined as violations only post-hoc. A second legal criticism focuses on the statute of limitation. Specifically in the Eastern European cases, most of the human rights violations occurred in the early years of the communist regimes (1950s). Lustrations, therefore, are applied on public positions that were held fifty years ago, which is, for most violations, beyond the reasonable timeframe for initiating legal proceedings.

Critics have also argued that lustrations are both legally and morally faulty since they do not attempt to determine individual responsibility, yet at the same time punish individuals. Moreover, the sweeping nature of lustration is prone to error and might result in innocent people being implicated.²⁹ To begin with, lustrations are based on unreliable police records, many of which might have been falsified deliberately. Secondly, for many of the implicated individuals, such as teachers who had to become party members in order to be able to work, collaboration with the regime was not a matter of choice and the price of defiance was extremely high.³⁰ For these reasons, some have concluded that while lustrations are practiced during the process of democratization, they “appear profoundly enmeshed in the ways of the old regime” and to an extent defy democratic legality and morality.³¹

Reparation and Compensation

Reparations are attempts to come to term with past human rights violations by means of financial compensation and material restitution.³² This conception follows the

²⁹ Tina Rosenberg, *The Haunted Land: Facing Europe's Ghosts after Communism* (New York, NY: Random House, 1995).

³⁰ Herman Schwartz, "Lustration in Eastern Europe," in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, ed. Neil J. Kritz (Washington DC.: United States Institute of Peace, 1995).

³¹ Ruti G. Teitel, *Transitional Justice* (New York, NY: Oxford University Press, 2000), 172.

³² Rama Mani, *Beyond Retribution: Seeking Justice in the Shadow of War* (Cambridge, UK: Policy Press, 2002), 173.

framework set by post-WWII German reparation program for Nazi atrocities, which to date is still the largest and most comprehensive program. While wartime reparations have long history³³, the German program (The Luxemburg Agreement, 1952) established an important precedent. It departed from the old formula, according to which reparations are a punitive interstate practice, and instead set two important new standards: first, the state pays reparations to individual survivors for their personal loss and suffering; second, rather than holding accountable the individuals or the regime that inflicted the harm, it is the successor regime that bear the costs of compensation.³⁴

Legally, this framework is grounded in both domestic civil law and customary international law. In domestic civil justice systems, as well as in insurance schemes, it is recognized that victims are entitled for compensation in cases of medical malpractice,

For many, monetary compensation is “the most tangible manifestation of the efforts of the state to remedy the harms they have suffered.” Pablo de Greiff, “Repairing the Past: Compensation for Victims of Human Rights Violations,” in *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford, UK: Oxford University Press, 2006), 2.

Other scholars, however, view reparations as comprising all “acts of restoring what has been lost, giving something to a victim equivalent to a loss or making, whether symbolic or material amend for what has been done.” Brandon Hamber, “Symbolic reparations in the Aftermath of Political Conflict,” in *Settling Accounts? Truth, Justice and Redress in Post-Conflict Societies* (Weatherhead Center for International Affairs, Harvard University: 2004).

Some even use a broader conceptualization of reparations and refer to it as “a process that has the purpose of relieving the suffering of and affording justice to victims by removing or redressing to the extent possible the consequences of the wrongful acts and by preventing and deterring violations.” Roman David and Susanne Choi Yuk-ping, “Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic,” *Human Rights Quarterly* 27, no. 2 (2005). Accordingly, measures such as the disclosure of truth, acknowledgment of responsibility publicly, prosecution, and preventive measures, are all considered as reparations. See also, Theo Van Boven et al., “Seminar on the Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Violation of Human Rights and Fundamental Freedoms: Summary and Conclusions,” in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, ed. Neil J. Kritz (Washington DC: United States Institute of Peace, 1995).

³³ Reparations were customary before WWII as an interstate mechanism for terminating wars and facilitating peace settlements. They were grounded in the 1907 Hague Convention, which required the belligerent states to pay compensation. A well-known example is the reparations imposed on Germany following WWI, which goal was punitive and aimed at deterring Germany from future aggression.

³⁴ Ruti G. Teitel, *Transitional Justice* (New York, NY: Oxford University Press, 2000), 122-124.; Ariel Colonomis and Andrea Armstrong, “German Reparation to the Jews after World War II: A Turning Point in the History of Reparations,” in *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford, UK: Oxford University Press, 2006).

personal injury, and contract violations.³⁵ Customary international law, including international conventions and numerous interstate cases, reflect broad principles of states' responsibility and obligation to compensating harmed individual and groups.³⁶

Reparations are a non-punitive victim-centered or survivors-centered measure, which recognizes victims' rights and the harms they suffered. They seek to redress two forms of injustice: "first, the legal injustice, such as injury, loss of life, employment, or property; second, the moral or psychological injustice, that is, victimization, trauma, and loss of dignity."³⁷ This logic guided reparations programs implemented in Argentina, Brazil, Chile, Guatemala, Malawi, and Peru as part of, or immediately after, their transition to democracy.³⁸

Monetary compensation, according to their proponents, fulfills real short and long term economic necessity. It can provide immediate economic relief for basic needs such as the purchase of food, medical care, and housing, all of which are particularly in need as victims of mass violence often have been displaced and their possessions confiscated. In the long-term and when large-scale payments (one time payment or lifetime pensions)

³⁵ Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston, MA: Beacon Press, 2000), 104.

³⁶ Nigel Rodley, "The International Legal Consequences of Torture, Extra-Legal Execution, and 'Disappearances,'" in *New Directions in Human Rights*, ed. Ellen Lutz, Hurst Hannum, and Kathryn J Burke (Philadelphia, PA: University of Pennsylvania Press, 1989).

³⁷ Rama Mani, *Beyond Retribution: Seeking Justice in the Shadow of War* (Cambridge, UK: Policy Press, 2002), 174.

³⁸ For detailed case studies that describe and analyze reparations programs, see Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford, UK: Oxford University Press, 2006).

A different form of reparations – termed representative reparations – refers to claims directed at past system of domination (e.g., colonialism, slavery). For example, The Civil Liberties Act, 1988 granted compensation to survivors of US internment of Japanese-American during WWII; the campaign of African-American for compensation for slavery. Roy L Brooks, "Japanese American Redress and the American Political Process: A Unique Achievement?," in *When Sorry Isn't Enough*, ed. Roy L Brooks (New York, NY: New York University Press, 1999).; Roy L Brooks, *Atonement and Forgiveness: A New Model for Black Reparations* (Berkeley, CA: University of California Press, 2004).; John Torpey, "Making Whole What Has Been Smashed," in *Post-Conflict Justice* ed. M. Cherif Bassiouni (Ardsley, NY: Transnational Publishers, Inc., 2002)..

are not viable, financial compensation may come in other forms, including affirmative action, which reallocates economic resources to victims by applying preferential treatment,³⁹ as well as, “free or subsidized access to medical and psychological treatment, reduced interests on loans for education, home building, and the establishment of new businesses.”⁴⁰ Another important form of material reparations is the restitution of stolen property, bank accounts, and artifacts, as well as restoring entitlement to former employment and official positions.

While monetary reparations are mostly allocated on individual basis, they are also relevant in cases where whole communities have been victimized. Reparations programs that are intended to rehabilitate the community as a whole may include the allocation of funding to carry out cultural activities, as well as to providing local medical or educational facilities.⁴¹

Proponents of material reparations oppose the dichotomy between the economic value and the symbolic effect of reparations. More often than not the monetary amount is inadequate to cover the victims’ loss; therefore, reparations are for the most part a symbolic act, by which the willingness to compensate and retribute publicly acknowledges past injustices and the suffering of victims: “reparations may symbolize a society’s undertaking not to forget or deny that a particulate injustice took place, and to respect and help sustain a dignified sense of identity-in-memory for the people

³⁹ Linda Human, “Affirmative Action as Reparation for Past Employment Discrimination in South Africa,” in *When Sorry Isn’t Enough*, ed. Roy L Brooks (New York, NY: New York University Press, 1999).

⁴⁰ Lloyd Vogelmann, director of the Johannesburg-based Center for the Study of Violence and Reconciliation, quoted in Luc Huyse, “Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past,” *Law and Social Inquiry* 20, no. 1 (1995): 53 fn.56.

⁴¹ Roy L Brooks, “The Age of Apology,” in *When Sorry Isn’t Enough*, ed. Roy L Brooks (New York, NY: New York University Press, 1999), 9.

affected.”⁴² As such, material reparations fulfill a psychological necessity and helping the victims’ process of healing.

Material reparations have also sparked opposition. Opponents argue that it is inappropriate and impossible to put value on victims’ sufferings and when survivors accept the so-called “blood money” they diminish the perpetrators’ actual and moral responsibility.⁴³ Material reparations also pose a practical problem. Countries in transitions have many other financial needs for rebuilding the new state and reparations set an additional economic strain. All the more as most of these transitioning states are developing countries whose economy is already frail⁴⁴

Trials

The prosecution of former officials goes back to the English and French Restoration regimes in the seventeen and nineteen centuries and even much further to ancient Greece.⁴⁵ In modern times the most important precedents are the Nuremberg and Tokyo War Crimes Tribunals, which introduced the principle of individual criminal accountability for human rights violations, and set forward the growing relationship between human rights and the rule of law.

Beyond the biblical notion of an “eye-for-an-eye,” war crimes trials address demands for justice and fulfill the expectation that those who transgressed deserve

⁴² Jeremy Waldron, “Superseding Historic Justice,” *Ethics* 103, no. 1 (1992): 6.; See also, Roman David and Susanne Choi Yuk-ping, “Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic,” *Human Rights Quarterly* 27, no. 2 (2005).

⁴³ For example, in Argentina, the *Asciacion Madres de Plaza de Mayo* refused economic reparations arguing that these are the government’s attempt to buy their silence.

⁴⁴ Ellen Lutz, “After the Elections: Compensating Victims of Human Rights Abuses,” in *New Directions in Human Rights* ed. Ellen Lutz, Hurst Hannum, and Kathryn J Burke (Philadelphia, PA: University of Pennsylvania Press, 1989).; Michelle Maiese, *Compensation and Reparation* (Conflict Research Consortium, University of Colorado, 2003 accessed 15 April 2007); available from <http://Beyondintractability.org/essay/compensation>.

⁴⁵ Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge, UK: Cambridge University Press, 2004).

punishment. Primarily, the punishing of perpetrators is considered a moral obligation to the victims. This moral duty has been established in international law in treaties, conventions, and by customary law; thereby, placing an obligation on transitional states, as well as on the international community, to prosecute and punish crimes against humanity and other serious human rights violations.⁴⁶

In transitioning societies trials also fulfill social and political goals. They promote the rule of law and avert individual acts of vengeance that during the havoc of the transition period might spiral and destabilize the new state. Trials serve, or at least are thought to serve as a deterrent from future abuses as well as remove potential threats to the new democratic state, such as the pro-authoritarian factions who may still hold both the power and the will to sabotage the transitional process.⁴⁷ Above all, trials are an indication that the new regime is breaking away from the country's undemocratic past; thereby, strengthening the new democracy and establishing its legitimacy.⁴⁸

In transitional justice settings there is a great variation in the format of trials that are practiced. The primary forum for prosecuting human rights abuses is *domestic courts*, where there is no direct international involvement in the judiciary. Examples include the national courts in Argentina and South Africa, the Iraqi High Tribunal, and the Ad Hoc Human Rights Court for East Timor.⁴⁹ Less common forum is the criminal prosecution in *foreign court* for human rights violations that took place in another country. This practice

⁴⁶ Diane F Orentlicher, "Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime," *Yale Law Journal* 100, no. 8 (1991).

⁴⁷ Ibid.

⁴⁸ Samuel P Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma Press, 1991). 213

⁴⁹ The Ad Hoc Human Rights Court for East Timor was established by a governmental law in March 2001 following international pressure. For details, press releases, and updates on the operation of the court see, *The Judicial System Monitoring Programme: Information on the Indonesian Ad Hoc Human Rights Court for East Timor* (accessed 15 April 2007); available from <http://www.jsmp.minihub.org/Indonesia/indonesia.htm>.

is based on the principle of universal jurisdiction, which is still highly controversial. The most notable case is that of the former Chilean General Augusto Pinochet who was arrested in London in 1998 and charged by British and Spanish courts. In other cases several Rwandans were prosecuted in France and Switzerland.⁵⁰

At the international level, human rights abuses are prosecuted in two forums. The first are the *International Ad Hoc Tribunals* that follow the legacy of Nuremberg and Tokyo.⁵¹ These include the tribunals in Yugoslavia (ICTY, 1993), Rwanda (ICTR, 1994), and Iraq (ICTI, 2005), which were established by the United Nations Security Council under Chapter VII.⁵² The second is the *International Criminal Court* in The Hague (ICC) established as a permanent tribunal for the prosecution of war crimes, genocide, and crimes against humanity by the Rome Statute (17 July 1998) and entered into force on July 1, 2002. Currently it is holding investigations into four cases of human rights

⁵⁰ The Pinochet trial in Britain was never completed and he was released on 2000 due to his deteriorating medical condition and ultimately returned to Chile where he was indicted and charged with several human rights crimes. He died in December 10, 2006 before being convicted.

France and Switzerland both indicted Rwandans (including in one case the French prosecution of current Rwanda President, Paul Kagame, for his involvement in the 1994 killing of the country's then president which sparked the genocide) for being involved in cases where French and Swiss citizens were killed.

⁵¹ Steven Ratner and Jason Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (New York, NY: Oxford University Press, 2001)..

⁵² Charter of the United Nations: Chapter VII: Action With Respect To Threats To The Peace, Breaches Of The Peace, And Acts Of Aggression. *United Nations: Charter of the United Nations* (accessed April 15 2007); available from <http://www.un.org/aboutun/charter/chapter7.shtml>.

International Criminal Tribunal for the former Yugoslavia (ICTY) *United Nations Security Council Resolution 827. Adopted 25 May 1993 (S/RES/827(1993))*, (accessed 15 April 2007); available from http://www.un.org/icty/legal/doc-e/basic/statut/S-RES-827_93.htm.

International Criminal Tribunals for Rwanda (ICTR) *United Nations Security Council Resolution 995 (1994). Adopted 8 November 1994 (S/RES/955 (1994))*, (accessed 15 April 2007); available from <http://daccessdds.un.org/doc/UNDOC/GEN/N95/140/97/PDF/N9514097.pdf?OpenElement>.

International Criminal Tribunal for Iraq (ICTI) *United Nations Security Council Resolution 1593. Adopted 31 March 2005 (S/RES/1593 (2005))*, (accessed 15 April 2007); available from [http://www.undemocracy.com/S-RES-1593\(2005\).pdf](http://www.undemocracy.com/S-RES-1593(2005).pdf).

violations: Democratic Republic of Congo; Uganda; Central African Republic; and Darfur, Sudan.⁵³

A recent development in criminal prosecution of human rights abuses are the *hybrid judicial courts*. Hybrid courts operate within the country where the crimes occurred but employ international capacity in the form of aid, counseling, or participation. Legal scholars and human rights activists argue that domestic justice systems in new democracies are often not robust enough; hence do not have the capacity to deal with extensive prosecutions. At the same time, international judicial processes are remote and often irrelevant to the affected community. The hybrid court model aims at overcoming these weaknesses by strengthening the domestic justice system while keeping the process closer to the affected society. Recent application of this model include Bosnia, Kosovo, Cambodia, East Timor, and most extensively in the Special Court for Sierra Leone.⁵⁴

Criminal prosecutions during transitional times face several criticisms. First, prosecution carries the risk of a backlash that might be significantly destabilizing for the new democracy. More so as trials might be used for political ends as a way to deter or remove potential political opponents. Second, only a small number of those who actually participated in the violence are likely to stand to trial. Accordingly, trials have limited capacity in addressing human rights violations that cut across society as a whole and include not only bodily harm but also wider patterns of discrimination and oppression. Moreover, when prosecutions focus on the “big fish”, that is, the higher-ranking officials

⁵³ *International Criminal Court Website*, (accessed 15 April 2007); available from <http://www2.icc-cpi.int/Menus/ICC/Home>.

⁵⁴ Sigall Horowitz, "Transitional criminal justice in Sierra Leone," in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge, UK: Cambridge University Press 2006)..

who gave the orders, many of those who executed the orders – often with extra viciousness and brutality – remain unpunished. Conversely, as it is sometimes difficult to obtain sufficient evidence linking high-rank officials to the actual crimes, it is often only the “little fish” that are tried, which may be perceived as mere tokenism and may undermine the justice process.⁵⁵

Third, like lustration, some argue that criminal prosecution during transition defies democratic principles.⁵⁶ Following the regime change, trials operate under norms and procedures that were not present at the time of the crimes. As such they uphold a post-hoc conception of justice, which legal jurisdiction is questionable and so is its morality.⁵⁷ Finally, while judicial proceedings are public, the judicial procedures and jargon are often not accessible or comprehensible to the general public, most significantly to the affected victims. The type of evidence admitted during trials and the burden of establishing guilt beyond reasonable doubt are quite different from a complete narrative of the past events. Accordingly, trials achieve little in terms of establishing a truthful record of past atrocities, that is, the type of truthful record that could have satisfied the need of the victims and the nation for closure.

Truth-Seeking Commissions

Truth-seeking commissions are a novelty of the second half of the twentieth century. According to Pricilla Hayner’s most cited definition “(1) truth commissions focus on the *past*; (2) they investigate a pattern of abuses over a period of time, rather

⁵⁵ Both these arguments were part of the criticism directed at the post-WWII prosecutions of Nazi war criminals.

⁵⁶ Luc Huyse, "Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past," *Law and Social Inquiry* 20, no. 1 (1995).

⁵⁷ Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston, MA: Beacon Press, 2000), 123.

than a specific event; (3) a truth commission is a temporary body, typically in operation for six months to two years, and completing its work with the submission of a report; and (4) these commissions are officially sanctioned, authorized, or empowered by the state.”⁵⁸

Truth-seeking commissions offer victims, witnesses, and perpetrators a setting to tell their stories, thereby creating a historical, and often public, record of past human rights violations. Unlike legal records, the narrative produced by truth commissions does not abide by rules of criminal evidence collection, which allows for a broader perspective on the pattern and causes of violence.⁵⁹

In addition to knowledge, acknowledgment is another important purpose of truth commissions.⁶⁰ The commission’s hearings as well as the final report, if it is a public one, serve as an official acknowledgment for the victims’ suffering and loss. According to advocates of truth commissions, the act of official acknowledgment is significant for two main reasons. First, it makes closure and healing possible for individual victims as well as for society as a whole. Second, by signaling a clear break from the practices of the former regime truth commissions establish the legitimacy and accountability of the new regime as well as reaffirm this new regime’s commitment to the rule of law. This goal is further advanced by the public identification and naming of perpetrators during the commission’s hearings and in the report.

National reconciliation is another often-stated goal of truth-seeking commissions. The underlining logic is that “by speaking openly and publicly about past silenced or

⁵⁸ Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, NY: Routledge, 2001), 14. *Italic in original.*

⁵⁹ Paul Van Zyl, “Justice without punishment: guaranteeing human rights in transitional societies,” in *Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, ed. Charles Villa-Vicencio and Wilhelm Verwoerd (Cape Town, South Africa: University of Cape Town Press, 2000).

⁶⁰ Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, NY: Routledge, 2001), 41 fn.43.

highly conflictive events ... a commission can ease some of the strains that may otherwise be present in national legislative or other political bodies.”⁶¹ In similar vain, individual reconciliation will also be achieved since process of truth-seeking promotes inter-personal trust.⁶² Finally, truth commissions also make recommendations for political, judicial, and educational reforms that are intended to set the new transitioning state on a better path towards a stable and properly functioning democracy.

Taken as a whole, truth commissions are merited with multiple democratizing effects.⁶³ They not only strengthen the accountability, legitimacy, and stability of the new regime but also help constitute and advance a “true” democratic political culture. Accordingly, truth commissions are facilitating the creation of a public sphere, via the deliberative dialogue over truth; fostering a culture of human rights by the shared commitment to norms that denounce human rights violations; promoting reconciliation, which is an element of democracy; and, establishing a common historical narrative.

Critics, on the other hand, argue that truth commissions do not fulfill the victims’ need or the state’s obligation and duty for justice, which can only be met by criminal prosecution.⁶⁴ Trials, which follow impartial rules of collecting evidence and witnesses’ testimonies, are less likely to be influenced politically and better equipped to establish, both in appearance and in practice, the rule of law in new states. Particularly criticized is the trade-off, introduced in the South African TRC, between truth and amnesty.

⁶¹ Ibid., 155.

⁶² Eric Brahm, "Uncovering the Truth: Examining Truth Commissions Success and Impact," *International Studies Perspectives* 8, no. 1 (2007).

⁶³ Kader Asmal, Louise Asmal, and Ronald Suresh Roberts, *Reconciliation through Truth: A Reckoning of Apartheid's Criminal Governance* (New York, NY: St. Martin's Press, 1997), 215.

⁶⁴ Diane F Orentlicher, "Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime," *Yale Law Journal* 100, no. 8 (1991).

Other critics argue that proponents of truth-seeking commissions overstate their importance and that the core assumptions about the relationship between truth-telling and peace building, reconciliation, or healing are flawed and do not pass empirical test.⁶⁵ Furthermore, truth commissions, as a general prescription for transitions, are not tailored to every situation and context. Variations, particularly cultural one, call for different conceptualizations of justice and reconciliation, and in order to avoid harmful results may necessitate different and more contextualised transitional mechanisms.⁶⁶

Historical-Narrative Revisions

Revisions of a nation official historical narrative is a process designed to replace a one-sided victors' history with a more complex narrative that incorporates factual depiction of past human rights violations while emphasizing the victims' experience and narrative. For that matter, historical narrative revisions are an effort to "purge" society from its shameful past through acknowledgment rather than denial or ignorance. This process is viewed both as an indication and instrument for the normalization of a society and the solidification of its democratic values and practices.⁶⁷

Historical narrative revisions may take two forms. The first is a bottom-up process in which a new narrative emerges out of an independent, and often uncoordinated, historical research of new, or revisionist, historians whose work challenge the old and official narrative, often provoking intense public debate which is resulting

⁶⁵ David Mendeloff, "Truth-Seeking, Truth-Telling and Postconflict Peacebuilding: Curb the Enthusiasm?," *International Studies Review* 6, no. 3 (2004).; James L Gibson, "Does Truth Lead to Reconciliation? Testing the Causal Assumption of the South African Truth and Reconciliation Process," *American Journal of Political Science* 48, no. 2 (2004).

⁶⁶ Tim Kelsall, "Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone," *Human Rights Quarterly* 27, no. 2 (2005).

⁶⁷ Gerog G Iggers, *The German Conception of History* (Hanover, NH: University Press of New England, 1983).

with changes in the representation and reinterpretation of contested historical events. The bottom-up process mostly characterizes well-established democracies, such as the United States, Germany, and France.⁶⁸

The second form of narrative revision is a top-down process, found mostly in post-conflict settings.⁶⁹ In these cases, a policy of historical narrative revision is a way to provide publicity to the victims' narrative, thereby acknowledging their suffering. This policy is motivated by the prospect that a new historical narrative would advance reconciliation as well as strengthen a culture of democracy. The Peruvian Truth and Reconciliation Commission, for example, adopted this logic and was the first to include in its report specific recommendations for reforms in history education.⁷⁰

The most concrete manifestation of changes in historical narratives is the revision of history textbooks. History and civic education is a tool in the process of "nation-building" that plays an important role in strengthening the citizens' allegiance to the state and reflects the "zeitgeist" of a period. Changes in history textbook not only reflect societal ideas, but are also a mechanism of change due to their socializing role in

⁶⁸ In the United States, see John Bodnar, *Remaking America: Public Memory, Commemoration and Patriotism in the Twentieth Century* (Princeton, NJ: Princeton University Press, 1991).; Eric Foner, *The New American History* (Philadelphia, PA: Temple University Press, 1990).. In Germany, see Gerog G Iggers, *The German Conception of History* (Hanover, NH: University Press of New England, 1983).; Charles S Maier, *The Unmasterable Past: History, Holocaust, and German National Identity* (Cambridge, MA: Harvard University Press, 1988).. In France, see Henry Rousso, *The Vichy Syndrome: History and Memory in France Since 1944* (Cambridge, MA: Harvard University Press, 1991).; Dan Gildea, *The Past in French History* (New Haven, CT: Yale University Press, 1994).

⁶⁹ This approach is apparent in the mission statement of The Institute of Historical Justice and Reconciliation, at the Salzburg Seminar. The Institute has been commissioning historical research which goal is to negotiate the historical narratives in conflict settings (for example, Northern Ireland and Israel-Palestine) as a way to facilitate conflict resolution and reconciliation *The Institute for Historical Justice and Reconciliation Website*, (accessed 15 April 2007); available from <http://www.salzburgseminar.org/2009/ihjr.cfm>.

⁷⁰ *Comisión de la verdad y Reconciliación - The Peruvian Truth and Reconciliation Commission Official Website*, (accessed 23 January 2009); available from <http://www.cverdad.org.pe/ingles/pagina01.php>.

constituting the nation's image and tradition, and hence identity.⁷¹ Accordingly, advocates of history textbooks revisions note their benign reconciliatory effects or potential for such, including overcoming hostility, stereotypes, and intolerance, as well as being "a channel through which new understandings of the past and new conceptions of former enemies may reach different levels of the society."⁷²

As an example, advocates often point to the contrast between Germany and Japan. Germany in the 1960s went through a process of critically revising its historical narrative and reforming its history education. In so doing Germany made a "clean break" with its Nazi legacy, including in the perceptions of its former adversaries. Japan, on the other hand, repeatedly refused calls to revise its WWII narrative, and consequently is still facing high levels of distrust and resentment by its Asian neighbors.⁷³ Revised textbooks have long-term effects. Unlike other transitional justice mechanisms that operate during or immediately following the transition or conflict, the reconciliatory effects of textbook revisions are expected within two or even three generations, and are likely to run deeper.⁷⁴

The primary caveat in transitional context is that most nations are able to critically address their history only once their national identity is well established and once their statehood is secured. Transitional societies are still in the process of state-building and

⁷¹ Micheal W. Apple, *Ideology and Curriculum* (New York, NY: Routledge, 1990).; Volker R Berghahn and Hanna Schissler, *Perceptions of History: International Textbook Research on Britain, Germany and the United States* (New York, NY: BERG Publishers Ltd. and St. Martins' Press, 1987).

⁷² *Changing Narratives of the Nation and the Search for Reconciliation; Project Description, Carnegie Council on Ethics and International Affairs*, (2002 accessed March 22 2009); available from http://www.cceia.org/media/714_hpr_textbook.pdf

⁷³ Elizabeth A Cole, "Transitional Justice and the Reform of History Education," *International Journal of Transitional Justice* 1, no. 1 (2007).

⁷⁴ Elizabeth A Cole, "Representing and Teaching Violent Past: Reconciliation and History Education," in *Settling Accounts? Truth, Justice and Redress in Post-Conflict Societies* (Weatherhead Center for International Affairs, Harvard University: 2004).

presumably still need a nationalistic historical narrative for the consolidation of their new nation and state. The practical challenge is, therefore, to identify the ways in which new nations can construct a national historical narrative that acknowledges past wrongdoings and yet is a source of national affirmation and pride.⁷⁵

Official Apologies

Apology is a verbal utterance that expresses acknowledgment of wrongdoing and regret. An official apology for past human rights violation is an act of performative redress:⁷⁶ a way to express remorse and raise the moral threshold of a society.⁷⁷ Post-WWII there has been noticeable number of official apologies, which are offered by heads of states and governments and directed at domestic (for example, President Ronald Reagan's August 10, 1988 official apology to Japanese-American victims of internment during WWII) or international (for example, President Clinton's March 10, 1999 official apology to the people of Guatemala for the United States' role in supporting the repressive regime) audience.⁷⁸

Many critics argue that apologies are merely a cynical political tactic. A lip service that enhances one's self-perception of moral superiority with little or no cost attached.⁷⁹ Advocates concur that when offered on their own, or when improperly delivered, apologies might be insincere and empty; yet, a ceremonial and publicized

⁷⁵ Michal Ben-Josef Hirsch, "From Taboo to the Negotiable: The Israeli New Historians and the Changing Representation of the Palestinian Refugee Problem," *Perspectives on Politics* 5, no. 2 (2007).

⁷⁶ Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation* (Stanford, CA: Stanford University Press, 1996).

⁷⁷ Roy L Brooks, "The Age of Apology," in *When Sorry Isn't Enough*, ed. Roy L Brooks (New York, NY: New York University Press, 1999), 3.

⁷⁸ Post-WWII there have been forty apologies offered by Heads of States and government and many more by religious and civic institutions, as well as private businesses Melissa Nobles, *The Politics of Official Apologies* (New York, NY: Cambridge University Press, 2008).

⁷⁹ Mark Gibney and Eric Roxstrom, "The Status of State Apologies," *Human Rights Quarterly* 23, no. 3 (2001).

apology that includes a detailed explanation of the nature of the wrongdoings, and that is accompanied with proper financial or other forms of compensation, is likely to have a benign moral and political influence.⁸⁰ Considered the epitome of official apologies is Willy Brandt's, the West German Chancellor, spontaneous kneeling in front of the monument commemorating the Warsaw Ghetto's uprising on 1943 during an official visit to the site on December 5, 1970. Brandt's silent act of repentance came to symbolize the dual effect – both moral and political – of official apologies.⁸¹

Morally, official apologies are an indicator for the state's intentions and actions. They reflect a moral code that condemns the type of behaviors for which they repent and presumably advance reconciliation. Official apologies serve as a public form of rehabilitation that empowers the victim by granting them the power to accept, refuse, or ignore the apology.⁸² Official apologies also initiate public debate about the past and consequently strengthen human rights norms, including the international principle that states have both the duty and the responsibility for protecting human rights. Since the government or regime offering the apology is typically not the one that did the harm, the official apology creates a sense of continuity in state's moral responsibility, and further strengthens this principle.⁸³

Politically, it is argued that official apologies contribute to the government's stability and legitimacy. While trials or reparations might be necessary in many cases, they are insufficient for establishing the rule of law in new democratizing states. Official

⁸⁰ John Borneman, "Public Apologies as Performative Redress," *SAIS Review* 25, no. 2 (2005).

⁸¹ Morally, Brandt's apology played an important role in allowing Germany back into "the human community of nations." Politically, his visit to Poland was part of Brandt's policy to normalize Germany's relations with Eastern European countries, and the apology undoubtedly played a role in securing this policy Ibid.

⁸² Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston, MA: Beacon Press, 2000), 115.

⁸³ Ruti G Teitel, *Transitional Justice* (New York, NY: Oxford University Press, 2000), 84.

apologies complement retribution and other forms of redress “by helping to reestablish the moral authority and impartiality of the national judicial system, which has been compromised through dictatorial or demagogical rule.”⁸⁴

Official apologies also expand the political membership in a community. The apology represents and endorses new reinterpretation of the state’s historical narrative. Consequently, the process of apology facilitates the correction of historical injustices and inequalities and the inclusion in the political community of previously excluded (or even ostracized and debilitated) groups.⁸⁵ In the international arena, official apologies may contribute to the state’s benign image, thereby reducing the threat perception by its former and present adversaries.⁸⁶

Public Commemoration

Commemorative activity is a social site that embodies the historical memory of the nation.⁸⁷ Public commemoration may take various forms including, building museums, erecting monuments or memorials, renaming public spaces, such as parks, schools, and public halls, and dedicating a day of remembering. By making past atrocities publicly visible, commemorative activity acknowledges the victims’ suffering and accords them honor.

Memorials and days of remembering are particularly important in cases of mass genocide and disappearances, where it is often unknown when the victims perished and where they were buried. The public commemorative activity provides the families of

⁸⁴ John Borneman, "Public Apologies as Performative Redress," *SAIS Review* 25, no. 2 (2005).

⁸⁵ Melissa Nobles, *The Politics of Official Apologies* (New York, NY: Cambridge University Press, 2008).

⁸⁶ Jennifer Lind, *Sorry States: Apologies in International Politics* (Ithaca, NY: Cornell University Press, 2008).

⁸⁷ John R Gillis, *Commemorations: The Politics of National Identity* (Princeton, NJ: Princeton University Press, 1994).

victims a collective tombstone and a physical site for mourning. Commemoration has also a preventive goal. It is a lasting reminder of past atrocities that communicates to broader audiences and serves as an educational tool. It proclaims "Never Again" and a public commitment to learn the lessons of history and avoid its recurrence.

Some argue that the significance of public commemorative site is not only in the end result but also in the process of their design and building.⁸⁸ Often in this process the public engages in the lively discussion and debate over the content and shape of the memorial. This debate provides an opportunity to reexamine once again the legacy of past horrors and to reshape the collective memory of the atrocities.⁸⁹

Why Focus on Truth-Seeking Commissions?

Based on the review of the different transitional-historical justice mechanisms and the typology presented above we can deduce a conceptual definition for truth commissions: truth commission is a *restorative* mechanism that embodies the directed effort by a *democratizing state* to accept responsibility for historical injustices by means of publicly acknowledging *collective* harm and recognizing *collective* guilt. Unlike Hayner definition, which lists the empirical characteristics of truth commissions, this definition is grounded in the theoretical concepts that frame transitional and historical justice.

The question that still remains is why does it make sense to single out truth-seeking commissions rather than studying all collective-restorative mechanisms or even

⁸⁸ Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston, MA: Beacon Press, 2000), 138.

⁸⁹ A notable example is the lengthy debate both in Germany and around the world over the Holocaust Memorial in Berlin (opened in 2005). The debate went beyond questions over the site, design, or cost of the memorial, and raised intense questions about the role of the memory of the holocaust in German society and culture and about the responsibility of younger generations to remember and acknowledge their forefathers' crimes.

the transitional justice phenomenon as a whole? First, among collective-restorative mechanisms of transitional justice there a noticeable dichotomy between official apologies, public commemoration, and historical narrative revisions, which are practiced primarily by mature or well-established democracies and truth commissions, which are practiced primarily by states transitioning to democracy. While we recently find some convergence (i.e., "old" democracies that follow the truth commission model to address historical cases of injustice and transitioning democracies that consider apology, narrative revision, and public commemoration) the dichotomy still pertain. In transitional contexts, in general, apologies, historical narrative revisions and public commemoration are considered complimentary and are recommended only after trials, lustration, or truth commissions took place. In this sense, truth-seeking commissions are qualitatively different from the rest of the collective-restorative mechanisms as it is an option that is being debated and applied on the same level-field of retributive mechanisms, such as lustration and trials, and earlier in the transition process. As following chapters will demonstrate, truth commissions are proposed as an alternative, initially weaker and later somewhat superior, to criminal prosecution.

Second, while retributive mechanisms, such as trials, purges, and lustration have a long history; truth-seeking commissions are a novelty of the end of the twentieth century. Not only are truth commissions a new phenomenon but also a fast spreading one, which by now transcended the context and circumstances for which they were originally designed.⁹⁰ For that reason, truth commissions is a good case for studying why

⁹⁰ For example, the application of truth commissions in conflict resolution processes, such as the Truth and Friendship Commission in Indonesia/East Timor, and in non-transitional settings, such as the Greensboro Truth and Reconciliation Commission in North Carolina, which was closely modeled after the South African TRC.

and how new ideas and practices emerge, evolve, and spread. Moreover, truth commissions are noted as “clearly one of the most important developments of the last two decades in confronting a legacy of past abuses,”⁹¹ and are accredited as “the staple of the transitional justice menu.”⁹² More often than not a truth-seeking process is now considered a condition that precedes other practices of transitional justice, such as official apologies, public commemorations, historical narrative revisions and even reparations.⁹³

The third reason for singling out truth commissions has to do with the way they have been studied to date. Thus far there has been little scholarly attention to the international spread of truth commissions. While there is a growing body of literature that describes and theorizes on different aspects transitional justice, including truth commissions, there have been only few attempts to aggregate and either describe or explain the worldwide scope of truth commissions. Recently, few studies have noted the growing international prevalence of truth commissions, moving beyond the idiosyncrasies of specific cases of transition and studying transitional justice as an international phenomenon, often using the terminology of international norms to explain it.⁹⁴ Most notably, Sikkink and Booth-Walling use the term “justice cascade” to describe

⁹¹ Neil J. Kritz, “Where We are and How We Got Here: An Overview of Development in the Search for Justice and Reconciliation,” in *The Legacy of Abuse: Confronting the Past, Facing the Future*, ed. Alice A. Henkin (Washington DC: The Aspen Institute, 2003), 37.

⁹² Naomi Roht-Arriaza, “The new landscape of transitional justice,” in *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge, UK: Cambridge University Press, 2006), 4.

⁹³ Mark Gibney and Eric Roxstrom, “The Status of State Apologies,” *Human Rights Quarterly* 23, no. 3 (2001): 937.

⁹⁴ Christopher Rudolph, “Constructing an Atrocities Regime: The Politics of War Crimes Tribunals,” *International Organization* 55, no. 3 (2001).; Michelle Sieff, “Reconciling Order and Justice? Dealing with the Past in Post-Conflict States” (PhD Dissertation, Columbia University 2002).; Jelena Subotic, “Hijacked Justice: Domestic Appropriation of International Norms, working paper no. 28,” (Denver, CO: Human Rights & Human Welfare, University of Denver, 2005).

the international trend of “democratizing states throughout the world beginning to hold individuals, including heads of state, accountable for past human rights violations.”⁹⁵

These studies, however, recurrently couple truth-seeking commissions and trials as two dichotomous manifestations of a single international phenomenon. This type of framing reinforces an already existing bias in the literature towards trials. To begin with, criminal prosecutions of past human rights violations tackle mostly individuals who were in high positions of power. These trials tend to become a media-focused event that naturally attracts a lot of attention. Second, trials often take place in the more noticeable cases of genocide and following international intervention, which furthers the international attention they receive. Third, the introduction of the ICC and the fact that it is mostly legal scholars who write about transitional justice further reinforced this bias. Consequently, by coupling truth-seeking commissions and trials, truth commissions tend to play a second fiddle in the study and evaluation of the international scope of the transitional justice phenomenon. More importantly, this framing fails to notice that the spread of truth commissions, while initially very much related to the “justice cascade,” has been taking a distinct and divergent path, both normatively and in practice. This divergent path merits the study of truth-seeking commissions as a phenomenon by its own right.

The final reason for focusing solely on truth-seeking commissions is rather pragmatic. As was set forward in the previous section, transitional justice is a multifaceted phenomenon and each of the mechanisms exhibit distinct characteristics and goals that raises different questions and debates. It would have been, therefore, overly

⁹⁵ Kathryn Sikkink and Carrie Both-Walling, "Errors about Trials: The Political Reality of the Justice Cascade and its Impact," in *Annual Meeting of American Political Science Association* (Washington, DC.: 2005), 1.

ambitious and most likely a reductionist attempt to study the whole phenomenon of transitional justice. When one studies the emergence and evolution of ideas the devil is in the details. Therefore, a narrower scope better aids study this significant international phenomenon. At the same time, however, the tangencies with other transitional justice mechanisms are important and will not be ignored.

Truth-Seeking Commissions' Universe of Cases

While most people are familiar with the more famous truth commissions such as those of Argentina (1983), South Africa (1995), and more recently Sierra Leona (2000), many are surprised to learn that the universe of all truth commissions currently consists of dozens of cases. To date, Priscilla Hayner's list of twenty-one truth commissions is the most widely consulted.⁹⁶ However, Hayner's list ends with the inauguration of the Sierra Leona Truth and Reconciliation Commission in 2000, which is around when the interest of this project begins. That is, the more recent cases which demonstrate the cascading of truth-seeking commissions around the world.

I have compiled an updated a universe of cases of forty-two truth-seeking commissions established between 1974 and 2006. My list is derived from several sources including previous lists of truth commissions offered by other scholars and by various IGOs and NGOs.⁹⁷ In order to overcome discrepancies and imprecision between lists,

⁹⁶ Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, NY: Routledge, 2001).

⁹⁷ *International Center for Transitional Justice Official Website*, (accessed 22 March 2009); available from www.ictj.org, *The Truth Commissions Project sponsored by the Program on Negotiation at Harvard Law School*, the *NGO Search for Common Ground in Washington DC*, and the *European Center for Common Grounds in Brussels*, (accessed 22 March 2009); available from <http://www.truthcommission.org/>. *The Truth Commissions Digital Collection, part of the Margarita S. Studemeister Digital Library in International Conflict Management at the United States Institute of Peace*, (accessed 22 March 2009); available from www.usip.org/library/truth.html. Daan Bronkhorst, *Truth Commissions and Transitional*

which often stem from using slightly different definitions and criteria for truth commissions, I combed newspapers articles on truth commissions using the World News Connection database⁹⁸ and the Transitional Justice biweekly News Summery, which is collected and distributed by the International Center for Transitional Justice.⁹⁹ Information was then reconfirmed by consulting Human Rights Watch reports and the US Department of State Country Reports on Human Rights Practices.¹⁰⁰

This universe includes commissions that focus on past human rights violations that occurred over time, as opposed to commissions that investigate specific incidents. One exception is the Bosnian Local Government Commission on the 1995 Srebrenica Massacre (2003), which was included since its inquiry did partially consider the broader context of the conflict in the former Yugoslavia, and more importantly, the commission followed in its stated goals and design the South African TRC.¹⁰¹

All the commissions that are included are temporary bodies and not Government Human Rights Commissions. Governmental commissions became common mostly in Africa and have been operating since the early 1990s. They generally investigate ongoing

Justice: A Short Guide (Amnesty International, the Netherlands, 2003 accessed 20 July 2005); available from http://www.amnesty.nl/downloads/truthcommissions_guide.doc.

⁹⁸ The World New Connection is an online news service, which includes translated and English-language news from all over the world, including local media. The coverage is since 1995. <http://wnc.fedworld.gov/>

⁹⁹ Since it was established, in 2001, the International Center for Transitional Justice (ICTJ) distributes a bimonthly newsletter which covers newspapers excerpts from all over the world *International Center for Transitional Justice Official Website*, (accessed 22 March 2009); available from www.ictj.org.

¹⁰⁰ *Human Rights Watch Official Website*, (accessed 22 March 2009); available from <http://www.hrw.org/>; *U.S. Department of State - Human Rights Reports*, (accessed March 22 2009); available from <http://www.state.gov/g/drl/rls/hrrpt/>.

¹⁰¹ The Bosnian's Local Government Commission on the 1995 Srebrenica Massacre followed the South African TRC in the sense that it was victims oriented and focused on hearing testimonies of both victims and perpetrators. *2005 Country Report on Human Rights Practices – Bosnia and Herzegovina, March 8*, (Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, 2006 accessed 25 January 2007); available from <http://www.state.gov/g/drl/rls/hrrpt/2005/61640.htm>.

By contrast, omitted from this universe of cases, for example, is the Indian Nanavati Commission on Anti-Sikh Riots in 1984. This commission, appointed by the government on May 8, 2000 was set to investigate the killings of some 4000 Sikh. This is an example of a commission that does not focus on a general pattern of human rights violations and was primarily a judicial commission, headed by a chief justice and operating under judicial rules of testimonies and evidence collection.

human rights violations, such as monitoring child labor, trafficking, illegal arrests, and torture, as opposed to truth-seeking commission that focus on past events.¹⁰²

In all but six cases included in this universe the truth commissions are officially mandated by the state, that is, initiated and operated following a legislation by the President, Government, Parliament, or the King. According to Hayner, the official state mandate is an important characteristic since it assures better information gathering, security of operation, and higher likelihood that the commission's recommendations will be implemented.¹⁰³ For this project, the official status is a particularly significant criterion. The theoretical model for the emergence and spreading of international norm tested here posits that as the international norm of truth-seeking is institutionalized, more states will adopt this practice due to international interest-based motivations, such as gaining international image and prestige. This type of motivations is likely to emerge, and is only pertinent, in cases of truth-seeking commissions that are officially mandated by the state.

The indicated exceptions all have had an official status even though they were not initiated or mandated by state legislation. These include: 1. The Commission on the Truth for El Salvador (1992) which was mandated by the United Nations and made official by the signatories to the peace accord - the Government of El Salvador and the FMLN; 2. The International Commission of Investigation of Human Rights Violations in Rwanda (1993) which was mandated by a coalition of local and international human rights

¹⁰² For a complete list of Government Human Rights Commissions in Africa see the website of Human Rights Watch. It closely follows the operation of these commissions as well as monitor the enforcement – or lack thereof – of their recommendations *Human Rights Watch Official Website*, (accessed 22 March 2009); available from <http://www.hrw.org/>.

¹⁰³ Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, NY: Routledge, 2001), 14.

organizations and agencies, yet its operation was officially recognized by President Habyarimana;¹⁰⁴ 3. The Guatemalan Historical Clarification Commission (1994) which was also mandated by the United Nations as part of a peace accord yet was supported, both publicly and financially, by the government;¹⁰⁵ 4. The Commission to Investigate Killings in 1993 Coup Attempt in Burundi (1995) which was mandated by the United Nation Security Council and was officially granted with judicial power including arrest authority by the government; 5. The Commission for the Reception of Truth and Reconciliation in East Timor (2002) was mandated by the United Nations Transitional Administration in East Timor, which was a national assembly equivalent both in power and position to state's government; 6. The Truth and Reconciliation Commission to Bosnia-Herzegovina (2005/6) was mandated by representatives of eight leading political parties that are all members of the Parliamentary Assembly.

Not included in the universe of cases are nongovernmental commissions and projects of documenting past abuses. While these commissions and projects endorse many of the goals and principles of official truth-seeking commissions and might be considered as another manifestation of the same international norm, they are omitted here since nongovernmental organizations are likely to exhibit a different set of motivations for truth-seeking.¹⁰⁶

¹⁰⁴ The Rwandan commission received access to official documents, including many judicial dossiers. At the same time, however, they were attempted assassinations and threats against potential witnesses, presumably by the government *Human Rights Report - Rwanda*, (Human Rights Watch 1994 accessed 15 April 2007); available from <http://www.hrw.org/reports/1994/WR94/Africa-06.htm>

¹⁰⁵ *Burundi Human Rights Practices, 1994*, (U.S. Department of State, February 1995 accessed); available from http://dosfan.lib.uic.edu/ERC/democracy/1994_hrp_report/94hrp_report_africa/Burundi.html.

¹⁰⁶ Examples of NGO's truth-seeking commissions and documentation projects include the following. In Brazil the *Numca Mais* report (1985), which was produced by church activists and local NGO and accounted for the repression and human rights violations under the military rule. The Catholic Church, *Torture in Brazil: a shocking report on the pervasive use of torture by Brazilian Military Government, 1964-1979*, trans. Jamie Wright (Austin, TX: Institute of Latin American Studies, Austin University, 1998).

As indicated in the table (see Appendix) this universe includes cases in various stages of operation: *completed* refers to cases in which the truth commission has finished its investigative phase and produced a report, either publicly published or confidential; *ongoing* are cases in which the truth commission has begun its operation; *halted* refers to cases in which truth commission initiative or operation has begun yet was abandoned; *initiative* are cases in which a drafted legislation has been proposed, yet the operation has not yet begun.

As of 2007, there are also six additional *recommended* commissions that are not included in the table, yet are worth mentioning and considering as part of the truth-seeking phenomenon. Recommended commissions are cases in which a truth commission is being considered as a viable option as part of the transitional process. These are cases in which an official or semi-official process of consultation and preparation for a truth commission has begun, generally by forming partnership with the United Nations, the International Center for Transitional Justice or other NGOs in order to draft the mandate and the legislation of the truth commission. These cases include proposals for truth commissions in Colombia (by President); Kenya (by current members of Parliament and

In Turkey, The Turkish-Armenian Reconciliation Commission (TARC) was formed in 2001 by civil society representatives and has been operating interchangeably since. At different periods of its operation it has received tacit support from both the Turkish and Armenian governments, yet was not officially endorsed. Kamer Kasim, "Turkish Armenian Reconciliation Commission: Missed Opportunity," in *Armenian Studies* (Center for Eurasian Strategic Studies, The Institute for Armenian Research, 2001/2). In the USA, The Greensboro Truth and Reconciliation Commission that operated as an independent local initiative to investigate the racial violence in Greensboro, N.C. on November 3, 1979 *Greensboro Truth and Reconciliation Commission*, (accessed March 22 2009); available from <http://www.greensborotrc.org/>. In Cambodia, The *Cambodian Genocide Databases* at the Genocide Studies Program at Yale University, has been recording information pertaining to massive violations of human rights in Cambodia during the Khmer Rouge regime of 1975 to 1979 *Cambodian Genocide Program*, (Genocide Studies, Yale University, accessed March 22 2009); available from <http://www.yale.edu/cgp/index.html>. Finally, not included in my universe of cases are the African National Congress (ANC) commissions. The ANC was the armed resistance group in South Africa and it has established two commissions (1992, 1993) to investigate its own past abuses. Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, NY: Routledge, 2001), 60-64.

government ministers); Afghanistan (by President and UN Mission in Afghanistan); Cote d'Ivoire (by UN); Iraq (by the Coalition Provisional Authority); and Nicaragua (by President and British aid officials). The rationalization for considering these cases as part of the truth-seeking phenomenon is that the recommendation phase often already embodies the decision-making process and manifests the domestic and international motivations and influences that shape this decision.

Truth-Seeking Trends

As the figure below illustrates, the number of truth commissions worldwide has been growing steadily. Uganda established the first truth commission in 1974¹⁰⁷, followed by Bolivia in 1982, Argentina in 1983, and Uruguay and Zimbabwe in 1985. In the following decade, 1986-1995, thirteen truth commissions were established, and since 1996 additional twenty-three truth commissions were established. In sum, by 2006 forty-one truth commissions has been established worldwide.

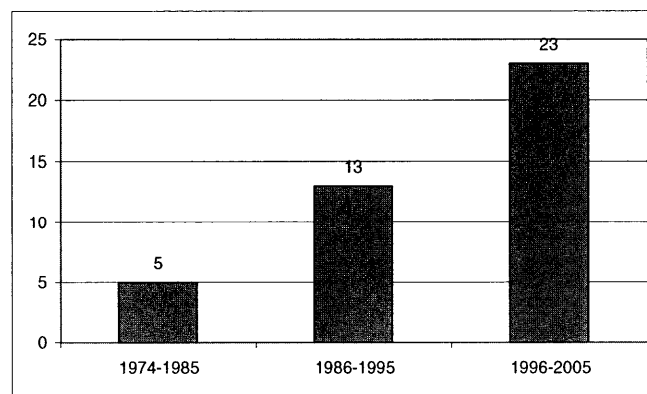


Figure 1: Truth Commissions Worldwide

¹⁰⁷ There have been commissions of inquiry or fact-finding commissions before the Ugandan Commission. For example, The Carnegie Endowment for International Peace established a commission to investigate alleged atrocities against civilians and prisoners of war during the Balkan Wars of 1912 and 1913. Similar commission of inquiry was established by the Allies after WWI to investigate Turkish and German atrocities.

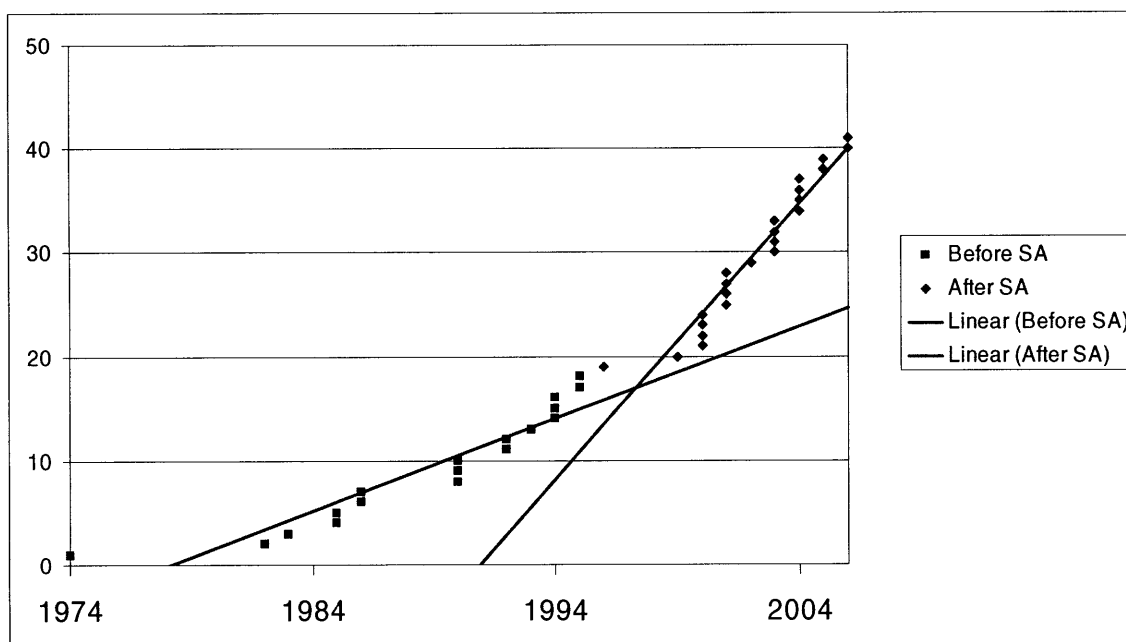


Figure 2: Truth Commissions – Cumulative Trend

If we consider the South African TRC as a break point, a clear pattern emerges. There were eighteen truth commissions in the first two decades (until 1995) while twenty-three truth commissions in the last decade (1996-2005). If one considers also the cases of recommended truth commissions that are currently in an advanced proposal stages, the number of truth commissions in the last decade is twenty-nine; namely, the total number of truth commissions more than doubled in the last decade.

As was noted earlier, truth-seeking commissions are not necessarily a practice unique to transitional societies. Priscilla Hayner, for example, present four cases of historical truth commissions that follow her operational definition of truth commission and that were set by well-established, or mature, democracies.¹⁰⁸ All the same, the

¹⁰⁸ The four cases of historical truth commissions include: The United States' Commission on Wartime Relocation and Internment of Civilians (1981); Canadian Royal Commission on Aboriginal Peoples (1991); The United States' Advisory Committee on Human Radiation Experiments (1994); Australian Human Rights and Equal Opportunity Commission. Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, NY: Routledge, 2001), 17-19 & 298-299.

universe of cases confirms that the majority – seventy-three percents – are cases in which the truth-seeking process was during regime change or immediately following the transition as part of a process of democratic consolidation.¹⁰⁹ Only eight truth commissions (18%) were established by undemocratic regimes, most of which might be described as halfhearted processes. Notably, seven of these eight cases were before the South African TRC and only one case (Lebanon, 2000) in the last decade.¹¹⁰ The fact that “sham” truth commissions, which are not part of a democratization process, are disappearing provides initial support to the proposition concerning the institutionalization of the truth-seeking norm. As this norm institutionalizes so are the domestic and international expectations from a “proper” truth-seeking process. Thus, making it more difficult, or even impossible, to pursue a mock truth commission which is not intended, both by its goals and design, to fulfill these expectation.

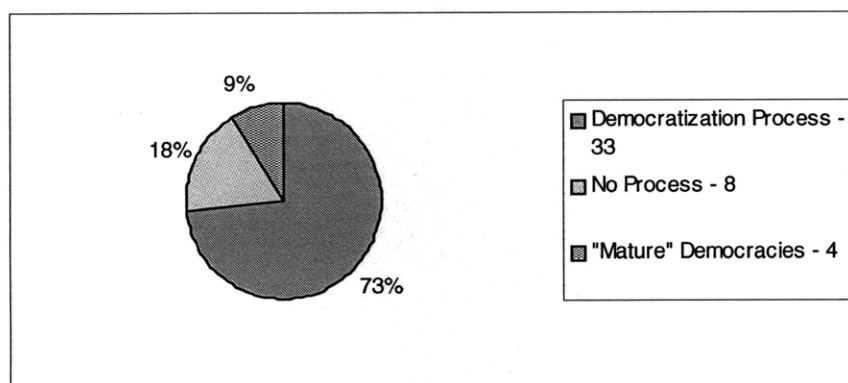


Figure 3: Truth commissions and democratization

¹⁰⁹ South Korea begun democratization in 1993, yet its truth commission was established in 2000. The truth commissions was framed and was part of the longer process of democratic consolidation, hence included in the group of states that have a truth-seeking process during or following transition to democracy.

¹¹⁰ The cases of non-democracies include: Uganda (1974 and 1986); Zimbabwe (1985); Chad (1990); Nepal (1990); Rwanda (1993); Sri Lanka (1994); Lebanon (2000).

Some argue that the Equity and Reconciliation Commission, established by the Moroccan King, is also an example of a truth-seeking process set in a non-democratic regime. Indeed, the Moroccan truth commission did not follow a regimes change; however, it is part of a broader process of political liberalization that was significantly accelerated since King Mohammed VI came to the throne in 1999.

Another observable trend is that truth commissions have been regionally concentrated, with the majority of truth commissions – twenty-seven commissions – in Latin America and Africa and noticeably small number of commissions in Europe and the Middle East and North Africa.¹¹¹ The regional concentration appears to support the proposition that truth commissions spread by means of regional emulation.

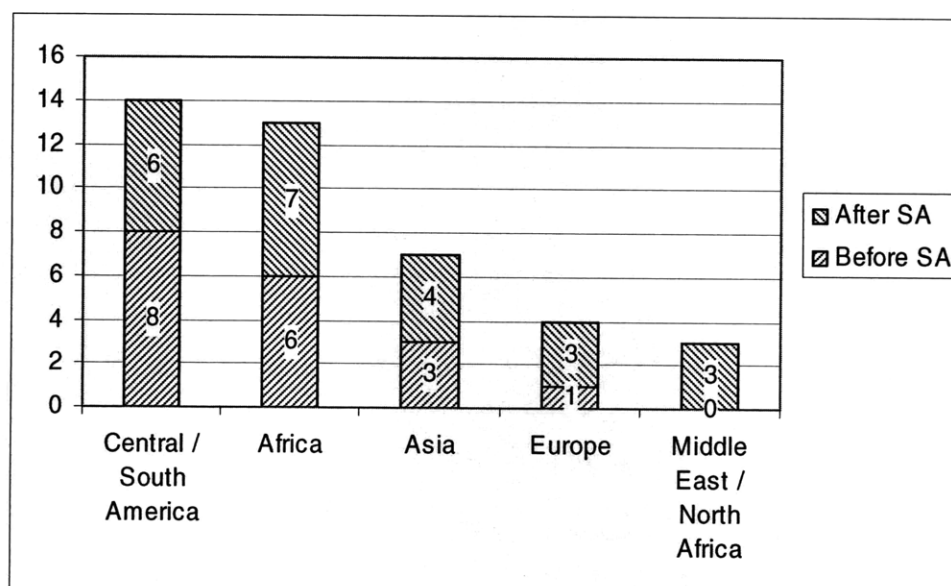


Figure 4: Truth commissions by regions

While regional emulation may account for the spreading of truth commissions in the first two decades (that is, before South Africa), the data suggests that in the last decade there is a gradual shift from regional to global proliferation of truth-seeking commissions. Before the South African TRC, fourteen truth commissions (79%) were in central/south America and Africa and only four (21%) in the other three regions (Asia,

¹¹¹ The absent of truth commission in the Middle East and North Africa is expected as most of the region is still non-democratic. More surprising, however, is the absent of truth commissions in Eastern Europe the Former Soviet Union. The short answer for this puzzle is that the Eastern European transitions occurred before truth-commissions emerged as an international norm. The following chapters dwells on this issue further.

Europe and the Middle East/North Africa). In the last decade, thirteen truth commissions (56%) were in central/south America and Africa, while there were ten truth-seeking (44%) in the other three regions.

Also observable is the growing contribution of international actors, who initiate, counsel, or actively participate in domestic truth commissions. In the first two decades, in twenty-eight percent of truth commissions (five cases) there was international sponsorship or participation to various degrees, such as the El Salvadorian (1992) and the Guatemalan (1994) commissions, which were initiated as part of a United Nations' brokered peace accord. In the last decade, there has been international sponsorship and participation in fifty-five percents of the cases (twelve cases).¹¹² The growing international contribution, mostly in the pre-commission stages, weakens claims that truth commissions are an entirely domestic enterprise. On the contrary, it indicates the growing institutionalization of the international forces that shape the decisions to establish a truth-seeking commission and that affect their design and operation. Most of the cases of international contribution to the truth-seeking process are cases of civil war cessation usually following a UN brokered peace accord (for example, Liberia, 2004; Burundi, 2005; Democratic Republic of Congo, 2005). Accordingly, the growing number of cases may merely reflect growing international intervention in civil war cessation. Even if this is the case, the fact that truth-seeking commissions are incorporated into the official terms of a UN brokered peace accords in many cases indicates that truth commissions are currently perceived at the international level as a useful tool for reconciliation and a recommended policy for conflict resolution.

¹¹² If one considers also the recommended cases than the number is closer to sixty-five percent since in all of these six cases there is active involvement of the International Center of Transitional Justice in the process of debating the truth commissions and drafting its mandate and design.

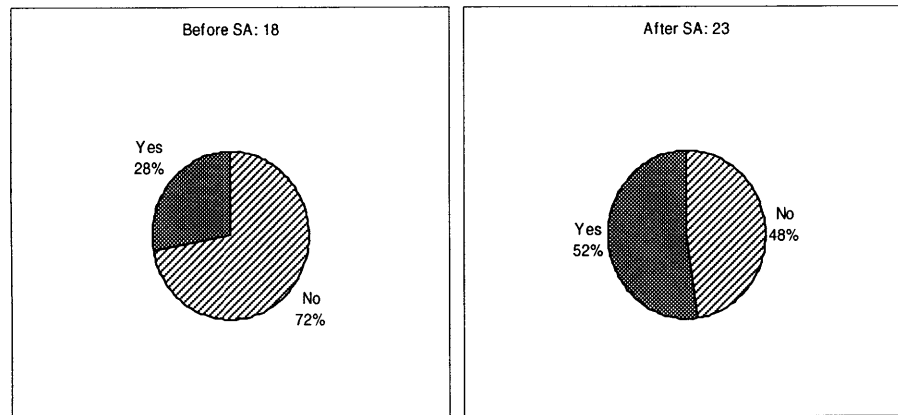


Figure 5: International Participation in truth commissions

The universe of cases also provides some initial support to the proposition that there is a change the goals of truth commissions. Truth commissions in the first two decades are mostly titled and framed as commissions of inquiry. For example: National Commission on the Disappeared in Argentina (1983); Commission for the Investigation of the Situation of the Disappeared and Related Events, in Uruguay (1985); Historical Clarification Commission, in Guatemala (1994). These titles reflect the primary goal of uncovering and publicizing unknown information. The first commission to incorporate reconciliation to its mission statement, as reflected in its title and mandate, is the Chilean National Commission on Truth and Reconciliation (1990), followed by the South African Truth and Reconciliation Commission (1995). Thereafter, fourteen (60%) out of the twenty-three truth commissions in the last decade included reconciliation in their title and mandate; thereby, reflecting an extension in the goals of the truth-seeking process to include not merely a fact-finding mission but rather the broader mission of reconciling both individuals and society as a whole.

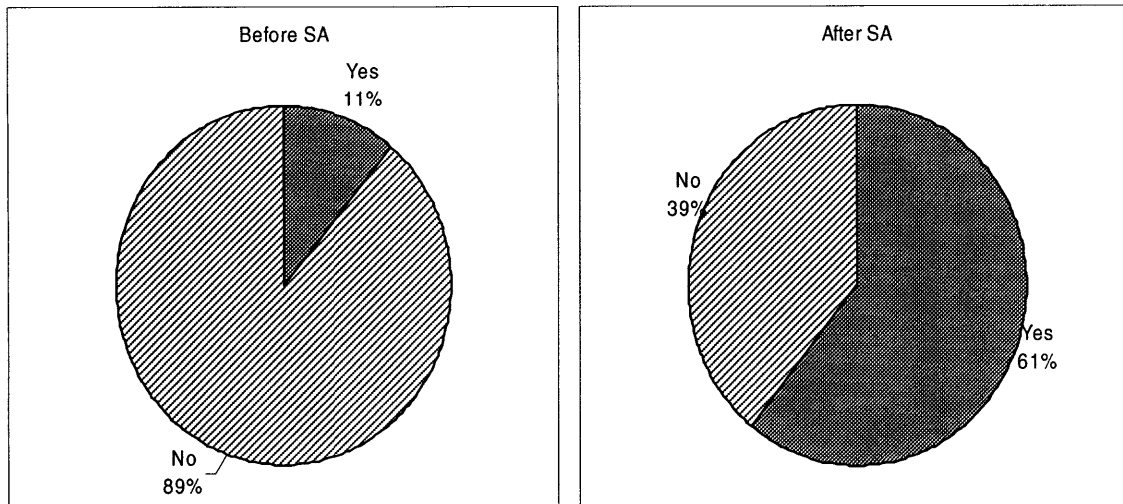


Figure 6: Reconciliation and truth commissions

To conclude, this chapter introduced a typology of transitional-historical justice mechanisms, which distinguishes truth-seeking commissions as a collective-restorative mechanism that is mostly practiced by democratizing states. This characterization supports the focus of this study on truth-seeking commissions, which have occupied a prominent, and what seems as a permanent niche in the field of transitional and historical justice. As such, truth commissions provide a unique and interesting opportunity for studying how new normative practices emerge, evolve, and how they become an enduring feature of the international environment.

The universe of cases of truth-seeking commissions provides initial empirical support for some of the hypotheses developed in this study. First, it is evident that there is a growing number of truth commissions that are by now not longer clustered regionally but rather represent a worldwide phenomenon. Second, the South African TRC marks a tipping point after which truth commissions have been spreading in a faster pace. Third, there is growing involvement of international actors in the initiation and operation of truth commissions, which is an indication for the growing institutionalization of this

practice at the international level. Finally, there is also a move towards placing reconciliation as distinct and primary goal for truth commissions, which is an indication for the change in the content – or the “logic of appropriateness” – that is attached to this practice.

These trends are by no means a sufficient validation for the existence of a truth-seeking norm. As was stated in the theory chapter, an international norm is more than a behavioral regularity and the mere repeated occurrence of a practice is insufficient to establish the emergence or the spread of an international norm. Nevertheless, demonstrating the international scope of truth-seeking commissions along with these trends is a minimum criteria and a good starting point for tracing how the truth-seeking principle emerged and how it has been institutionalized into an international norm.

Chapter 4

Seeking Truth: The Origins and Legacy of a Domestic Practice

Prior to the South African TRC there were several truth commissions. I argue, however, that the truth-seeking principle emerged as an international norm only during and following the South African TRC. This chapter analyses the pre-norm background of the truth-seeking principle. I demonstrate that the truth commissions that preceded the South Africa TRC, specifically the Latin American commissions, were different from the TRC both in their practice and in their conceptual rationales and did not constitute an international norm. At the same time, I identify key developments, which have led and shaped the subsequent emergence of the truth-seeking norm, including the principle of accountability for human rights violations and its link to democratic transitions and the emergence of the broader transitional justice advocacy network.

This chapter (and the following ones) identifies the constitution of the truth-seeking norm by tracing the practice of truth commissions and the discourse that defined them conceptually.¹ The organization of this chapter is both chronological and thematic. I begin my analysis with the Nuremburg Trials, which established the principle of universal human rights as well as the commitment to their protection by legal means. The

¹ The genealogy of the truth-seeking norm, particularly in this chapter, was informed by Ruti G Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Journal* 16 (2003).. In what follows, I cite Teitel's genealogy when appropriate. However, there are several significant differences between Teitel's genealogy of transitional justice and the genealogy of the truth-seeking norm. First, since Teitel is a legal scholar she is primarily concerned with the genealogy of transitional justice as a legal phenomenon. For her, truth-commissions are placed within the contexts of the pursuit of justice and in relations to questions of universal jurisdiction and choices between legal measures. I, on the other hand, place the search for truth and truth commissions at the center of my analysis. In following chapters, I demonstrate the emergence of new rationales for truth commissions, which made them distinct from trials. Second, Teitel's independent variable is the domestic political context. While she mentions international factors, such as globalization and human rights discourse, her focus is on domestic constraints and domestic choices. I, on the other hand, focus on the process at the international level-of-analysis. Finally, Teitel's genealogy is largely descriptive, while I present a causal explanation.

Nuremburg model introduced two additional principles: first, the importance of creating a public record of past atrocities; second, the importance of establishing accountability for past abuses during democratic transition. Two decades later, however, during the democratic transitions in Portugal and Spain these principles were rejected and these transitions set the dichotomous model of collective amnesia.

Next, I demonstrate how truth commissions emerged as a political and conceptual compromise during the Latin American democratic transitions. Politically, truth commissions came to balance between the pressures from members of the former regime who wanted to escape prosecution, on the one hand, and domestic and international calls for justice and accountability, on the other. Conceptually, they emerged as the “third way” out of the dichotomy between the principles of Nuremburg and the model of collective amnesia. Moreover, in Latin America there was an apparent relationship between the methods of repression (disappearances) and the practical need to investigate for the truth. In general, however, those who designed the truth commissions framed their goals narrowly. Truth commissions were widely considered a “weaker” alternative to trials. For the most part, scholars and human rights practitioners considered truth commissions to be rather limited and inappropriate for other contexts, such as the democratic transitions in Eastern Europe.

The final point I make in this chapter addresses the emerging discipline of transitional justice. The transitions in Latin America and Eastern Europe triggered a growing exchange among scholars and practitioners. To a great extent, this intellectual exchange accepted the “weaker” and “compromising” status of truth commissions relative to the moral benchmark of trials. At the same time, it reaffirmed the significance

of knowledge and acknowledgment of past human rights violations. In addition, it established a broad network, which would later be the backdrop for debates over the truth-seeking principle and for the emergence of the truth-seeking epistemic community.

The Dichotomy between Punishment and Collective Amnesia

The early truth commissions in Latin America emerged as the middle-ground solution between punishment and pardon.² The punishment model was based on the legacy of the Nuremburg Trials, and specifically on the principle of individual legal accountability for human rights violations. The pardon model was largely shaped by post-Franco Spain, which championed collective amnesia.

The Legacy of Nuremburg

World War II and the Nuremburg Trials are, almost without exceptions, the starting point for all transitional justice scholarship and analysis.³ World War I raised the issue of nations' responsibility for an unjust war. Yet, the Treaty of Versailles established the principle of relegating justice and accountability to national sovereignty rather than international jurisdiction (e.g., the domestic trials in Germany and Turkey).⁴ The real and perceived failure of the Treaty of Versailles to either enforce a fair punishment on

² Chandra Lekha Sriram, *Confronting Past Human Rights Violations: Justice vs. Peace in Times of Transition* (London, UK: Frank Cass, 2004).

³ Ruti G Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Journal* 16 (2003): 76. There are, however, two notable exceptions. Jon Elster argues that transitional justice is not limited to modern or democratic regimes and demonstrates his argument with Athenian (411 B.C and in 404-403 B.C) and French (1814 and 1815 restoration of the monarchy) cases, Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge, UK: Cambridge University Press, 2004). Gary Bass argues that the principle of international legalism (as opposed to the arbitrariness of punishing enemies) emerged before the Nuremburg trials. He traces this principle to the British restraint following their victory over Napoleon and to post-WWI Leipzig and Constantinople Trials, Gary Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton, NJ. : Princeton University Press, 2002).

⁴ The Treaty of Versailles addressed the issue national accountability with reparations that were enforced on Germany. Ruti G Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Journal* 16 (2003).

German aggression or prevent future German aggression largely shaped the Allies decisions after WWII to establish the international war crimes tribunals. The primary novelty of the international war tribunals was that they established the approach of international jurisdiction over cases of war crimes. This approach was further solidified in the international conventions that were signed soon after WWII, such as the Genocide Convention.⁵ Beyond the principle of international jurisdiction, the Nuremburg Trials also strengthened the liberal principle of individual accountability for crimes of war.⁶

While international jurisdiction and individual accountability are both important legal principles, the legacy of the Nuremburg Trials does not end with them. For the historical context of the truth-seeking norm, the Nuremburg Trials had three important legacies: first, the initiation of the International Human Rights Regime; second, the approach that a truthful account of the atrocities is part of justice; third, that justice and truth are important for the process of democratic transition. While these three legacies were not conceived at the time as one coherent approach, they later became the framework and point of reference for future framing of truth-seeking commissions.

The first important legacy of the Nuremburg Trials was the initiation of the international human rights regime. The Charter of the International Military Tribunals defined the goals and scope of the Nuremburg Trials. In addition to addressing crimes against peace and war crimes it introduced the idea of crimes against humanity;⁷ thereby,

⁵ *Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly resolution 260 A (III) of 9 December 1948*, (Office of the High Commissioner for Human Rights, The United Nations accessed June 17 2007); available from http://www.unhchr.ch/html/menu3/b/p_genoci.htm. In reality, the first time these principles came into practice was only in the International tribunals for the Former Yugoslavia and Rwanda.

⁶ Ruti G Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Journal* 16 (2003): 73.

⁷ The Charter of the International Military Tribunals, also known as the London Charter (August 8, 1945) was drafted by United States Supreme Court Justice Robert H. Jackson, French Judge Robert Falco, and Russian Judge and Major-General Iona Nikitchenko, *Nuremberg Trial Proceedings Vol. 1; Charter of the*

[it] “criminalized state wrongdoing as part of a universal right scheme.”⁸ While the charge of crimes against humanity appeared in the tribunal charter, in practice there was insufficient international legal foundation to address this charge. This deficiency along with a “shared moral revulsion ... against the Holocaust” has shaped, according to Levy and Sznajder, “a moral consensus about human rights.”⁹ The emerging consensus about human rights and about their universality was formalized initially in the Universal Declaration of Human Rights (1948) and in the Genocide Convention (1948) and the Geneva Conventions of Rules of War (1949), which outlawed crimes against humanity and Genocide.¹⁰ These and other subsequent treaties and conventions reaffirmed international law as well as the international commitment to prevent and punish gross human rights violations.¹¹

The second legacy of the Nuremburg Trials is the making of public record and knowledge of war atrocities an integral component of justice. The specific goal of establishing an official historical record came up often in the discussions that preceded the trials. Supreme Court Justice Robert H. Jackson argued that recording and publicizing

International Military Tribunal, (The Avalon Project: Documents in Law, History and Diplomacy, accessed March 22 2009); available from <http://avalon.law.yale.edu/imt/imtconst.asp>.

While it was the first legal-official document to include the concept crimes against humanity, the Charter was not the first public statement of this concept. In 1915, Britain issued a statement that termed the Armenian Genocide in the Ottoman Empire as crimes against humanity and civilization. Yet, when in 1919 the Covenant of the League of Nations was drafted and signed it did not include a reference to war atrocities, Gary Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton, NJ. : Princeton University Press, 2002), 106-107.

⁸ Ruti G Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Journal* 16 (2003): 70.

⁹ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia, PA: University of Pennsylvania Press, 1999), Daniel Levy and Natan Sznajder, "The Institutionalization of Cosmopolitan Morality: The Holocaust and Human Rights " *Journal of Human Rights* 3, no. 2 (2004): 150.

¹⁰ Paul Gordon Lauren, *The Evolution of International Human Rights*, Second Edition ed. (Philadelphia, PA: University of Pennsylvania Press).

¹¹ Jack Donnelly, "International human rights: a regime analysis," *International Organization* 40, no. 3 (1986).; Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston, MA: Beacon Press, 2000), 47-49.

the factual truth is essential “so that denial or revisionism will be impossible in the future.”¹² During and following the trials the publication of the truth was indeed Allies’ official policy. The trials’ supporting documents and proceedings were published in eleven volumes and twenty-two documents and the trials’ proceedings were a public event broadcasted over the Allies’ radio as well as publicized in films and pamphlets.¹³

The third legacy of the Nuremburg Trials is that they introduced the idea that war crimes accountability is important for political transition, especially democratization. In the debate in the American Administration about how deal with Nazi war criminals there where two main approaches. Henry Morgenthau Jr., then United States’ Treasury Secretary and a close confidant of President Roosevelt, stressed the Nazi extermination project and favored summary executions, which were also favored by the Soviets. Henry Stimson, United States Secretary of War, on the other hand, called for a legal due process and argued that the United States should export its domestic legal norms to Germany as an educational tool and part of the German state’s rehabilitations and transformation.¹⁴ In the end, the domestic legalism arguments prevailed and the Nuremburg Trials became a symbol of Germany’s break with its Nazi past and of its transition to a new democratic future. Even in retrospect, as David Cohen argues, “transitional justice in postwar Germany might be considered a failure in terms of justice... [yet] it was successful in

¹² Supreme Court Justice, Robert Jackson, who was the United States Chief Prosecutor at the Nuremburg Trials, cited in Michael P Scharf, "The Case for a Permanent International Truth Commission," *Duke Journal of Comparative & International Law* 7, no. 2 (1997): 375.

¹³ Gary Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton, NJ. : Princeton University Press, 2002), 147-205.

¹⁴ Ibid.

terms of achieving political objectives, that is, the stigmatization of the Nazi regime, reinforcing the rule of law, and uncovering the truth about the abuses.”¹⁵

This legacy is especially important for our discussion as it paved the way for political arguments for transitional justice mechanisms. In the transitional justice literature it has been common to describe the transition from repressive regime to democracy as a “crossroad,” in which the new regime faces the decision about “what to do about the past.” In reality, this “crossroad” is a post-WWII development. In the first wave of democratization, which occurred in the late-nineteen century democratization implied the inclusions of new citizens and groups in the political process. There was no real meaning to the idea of transitioning from one regime to another.¹⁶ The conception that truth, justice, or even the rule of law are necessary conditions for democratization was effectively absent. Only the conceptualization of the Nuremburg Trials in terms of their expected positive domestic political effects made questions about the nexus between justice, truth, and democratization intrinsic to all future political transitions.

The one thing that was distinctively absent from the Nuremburg Trials were the voices of victims of the Nazi crimes against humanity. Despite the extensive human rights rhetoric, the primary focus of the war tribunals was prosecution of the charge of aggressive war and not prosecution of human rights atrocities.¹⁷ During the proceedings,

¹⁵ David Cohen, “Transitional Justice in Divided Germany after 1945,” in *Retribution and Reparation in the Transition to Democracy*, ed. Jon Elster (New York, NY: Cambridge University Press, 2006), 60.. For similar analysis and argument see, John H Hertz, “Denazification and Related Policies,” in *Dictatorship to Democracy: Coping with the Legacies of Authoritarianism and Totalitarianism*, ed. John H Hertz (Westport CT: Greenwood Publishing, 1982).

¹⁶ In “first wave democratization” the processes of democratization focused on reforming existing institutions in order to expand their application on the new citizenry, Harry Eckstein, “Lessons for the “Third Wave” from the First: An Essay in Democratization, Working Paper 96’02,” (Irvin, CA: Center for the Study of Democracy, University of California, Irvin, 1996).

¹⁷ The decision for the war tribunal was approved in January 1945 before the liberation of the concentration camps in April of that year and before there was comprehensive realization of the scope of Nazi atrocities,

Allies prosecutors paid little attention to victims, who mostly remained abstract and on the margins of the legal process.¹⁸ In the early 1950s, West Germany passed the Compensations Laws that offered monetary reparations to victims, yet there was still no voice to the experiences and stories of the victims. Only in the mid-1960s when Germany was a well-established democracy did the issue of dealing collectively with the Nazi past and Nazi victims resurfaced. The event that marked this shift was the Eichmann trial in Israel, which directed German public's attention to the Holocaust, in a way that the Nuremberg Trials never did.¹⁹ It took another two decades, with the so-called German Historians Debate (Historikersreit) in the mid-1980s, for Germany to publically raise questions about collective German responsibility for the Holocaust and about the effects of Nazi atrocities on German national identity.²⁰ These debates gained wide international attention and augmented the legacy of the German experience. In addition to the three legacies discussed above, the renewed debates within Germany highlighted the importance and the effects of the collective historical narrative and memory of gross human rights violations.²¹ These themes and the references to the German experience later became prominent in the positive framing of truth-seeking commissions.

John H Hertz, "An Historical Perspective," in *State Crimes: Punishment or Pardon* (Wye Center, MD: The Justice and Society Program of The Aspen Institute 1989).

¹⁸ Daniel Levy and Natan Sznaider, "The Institutionalization of Cosmopolitan Morality: The Holocaust and Human Rights " *Journal of Human Rights* 3, no. 2 (2004).

¹⁹ Around the same time Germany also held the Auschwitz trials (Frankfurt, 1963-1965) and later the Majdanek trials (Dusseldorf, 1975-1981), which also focused on crimes against humanity and on the victims' testimonies. These trials also raised the broader question of German collective responsibility.

²⁰ Charles S Maier, *The Unmasterable Past: History, Holocaust, and German National Identity* (Cambridge, MA: Harvard University Press, 1988).; Richard Evans, *In Hitler's Shadow: West German Historians And The Attempt To Escape From The Nazi Past* (London, UK: I.B. Tauris, 1989).; Peter Baldwin, *Hitler, the Holocaust and the Historians Dispute* (Boston, MA: Beacon Press, 1990).

²¹ Daniel Levy and Natan Sznaider, "Memory Unbound: The Holocaust and the Formation of Cosmopolitan Memory," *European Journal of Social Theory* 5, no. 2 (2002).

Collective Amnesia

In the immediate aftermath of the Nuremburg Trials there was anticipation that the principle of international law would be institutionalized. However, Cold War interests and politics as well as the vocal criticism of Nuremburg's "victors' justice" diminished the actual applicability of this principle. Specifically, in the Southern European democratic transitions in the mid-1970s (Portugal and Spain)²² local leaders argued that the Nuremburg model is "exceptional" and is only feasible under specific conditions of international-led nation-building that are not commonly available following a regime change.²³ In these transitions, Ernest Renan's dictum that "the past is better left buried in the past," became the preferred political strategy.

In Portugal, the dictatorship of Antonio de Oliveira Salazar lasted for four decades. His *Estado Novo* (New State) regime institutionalized extensive repression that was mainly applied by the brutal secrete police (the PIDE). Following Salazar's death in 1970 and the growing costs its colonial wars, the so-called Carnations Revolution (April 1974) marked the end of the authoritarian regime. During the transition period, Antonio de Spínola's provisional government supported by Armed Forces Movement (MFA – leaders of the April revolution) adopted an extensive policy of purges. The so-called "Savage Purges," which were exceedingly politicized and literally went out of control led

²² Greece also had a regime change in 1974 following the ousting of the repressive military Junta of Colonel George Papadopoulos (1967-1974). The new democratic regime in Greece preferred the "doing nothing" approach; yet, public pressure and civil lawsuits persuaded the new regime to prosecute four hundred former government officials. This was made possible as the former Junta in Greece was politically weak having defeated in the confrontation with Turkey over Cyprus. P. Nikiforos Diamandouros, "Regime Change and the Prospects for Democracy in Greece," in *Transitions From Authoritarian Rule: Southern Europe* ed. Gulliermo O'Donnell, Philippe C Schmitter, and Laurence Whitehead (Baltimore, MD The Johns Hopkins University Press, 1986).

²³ Ruti G Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Journal* 16 (2003): 70.

Portugal to the brinks of a civil war.²⁴ So, one of the first acts of the democratically elected government of Mario Soares, the leader of the Socialist Party (PS), in 1976 was to cancel the previous purges in favor of a policy of reintegration. This was a necessary political move since the Socialist Party did not win the majority of Parliament and at the end formed a coalition with the rightist Democratic Social Center Party. Both the Leftists and the Rightist agreed that given the political turmoil “doing nothing about the past” is the best policy.²⁵

In Spain, the so-called *Pacto del Olvido* (Pact of Forgetting) was not merely a lesser evil but an official ideology and policy of “deliberate and consensual decision to abstain from transitional justice including the sealing of the archives of the secret police.”²⁶ As stated by Spain’s first democratically elected Prime Minister Suarez: “the question is not to ask people where they are coming from, but where they are going to.”²⁷ The Franco dictatorship (1939-1975) dissolved in two decades of gradual change and the final transition into democracy was also facilitated by reforms.²⁸ Consequently, many in Spain felt that there is a lot to be lost by dealing with the repressive past. Many observers, both inside and outside Spain, anticipated the worse about the prospects of violence during and following the transition; therefore, the main concern was minimize and avoid

²⁴ Antonio Costa Pinto, "Settling Accounts with the Past in a Troubled Transition to Democracy: The Portuguese Case," in *Politics of Memory: Transitional Justice in Democratizing Societies*, ed. Alexandra Barahona de Brito, Carmen Gonzalez-Enriquez, and Paloma Aguilar (Oxford, UK: Oxford University Press, 2001).

²⁵ Kenneth Maxwell, "Regime Overthrow and the Prospects of Democratic Transition in Portugal," in *Transitions From Authoritarian Rule: Southern Europe* ed. Guillermo O'Donnell, Philippe C Schmitter, and Laurence Whitehead (Baltimore, MD: John Hopkins University Press, 1986).

²⁶ Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge, UK: Cambridge University Press, 2004), 61. See also, Andrew Rigby, *Justice and Reconciliation After the Violence*, vol. Lynne Rienner Publishers (Boulder, CO, 2001), 39-61.

²⁷ Quoted in Neil J Krutz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, 3 vols., vol. 2: Country Studies (Washington DC.: United States Institute of Peace, 1995), 299.

²⁸ Edward Malefakis, "Spain and its Francoist Heritage," in *From Dictatorship to Democracy: Coping with the Legacies of Authoritarianism and Totalitarianism*, ed. John H Hertz (Westport, CT: Greenwood Press, 1982)..

conflict at all cost.²⁹ In addition to arguments about the political infeasibility of dealing with the past, some advocated forgetting in the name of reconciliation. As noted by a Communist Party representative of in the parliamentary debate over amnesty: “how can we be capable of reconciliation after years of killing each other if we do not have the capacity to forget our past forever?”³⁰ With next to no public debate the amnesty law was passed in 1977 and many officials that served under the Franco regime continued holding their positions within the state’s structure.

The transitions in Portugal and to a greater extent in Spain set a model that was in stark opposition to the Nuremburg model. The model of collective amnesia denied the universality of the principle that human rights ought to be protected by legal means. Moreover, it rejected the essentiality of the link between either justice or truth and political transition. Forgetting the repressive past was conceived not only as a lesser strategy when no alternative is available, but also as a positive strategy that is conducive to the transition process: “to leave the past alone is the best way to avoid upsetting a delicate process of transition or to avoid a return to past dictatorship... there is a dragon living on the patio and we had better not provoke it.”³¹ Collective amnesia as practiced in Portugal and Spain became an important precedent. It established the conceptual dichotomy between punishment and pardon and between remembering and forgetting state crimes. This dichotomy came to be the frame of reference in later transitions.

²⁹ Paloma Aguilar, "Justice, Politics and Memory in the Spanish Transition," in *The Politics of Memory: Transitional Justice in Democratizing Societies*, ed. Alexandra Barahona de Brito, Carmen Gonzalez-Enriquez, and Paloma Aguilar (Oxford, UK: Oxford University Press, 2001).

³⁰ Quoted in Neil J Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, 3 vols., vol. 2: Country Studies (Washington DC.: United States Institute of Peace, 1995), 299.

³¹ Tina Rosenberg cited in, Alex Boraine, Levy Janet, and Scheffer Ronel, eds., *Dealing with the Past: Truth and Reconciliation in South Africa* (Cape Town, South Africa Institute for Democracy in South Africa, 1994), 66.

The Third Way: The Truth as a Compromise

Our common sense seems to support both positions: that a voluntarily committed criminal act is deserving of punishment and that the social consequences of applying this punishment must be considered. It would be irrational to impose punishment when the consequences of doing so, far from preventing future crimes, might cause greater social harm than that caused by the crime itself or by the absence of punishment.³² Raul Alfonsin, Argentinean President, 1983-1989

This statement by the former President of Argentina Raul Alfonsin captures the dilemma between punishment and pardon as it was manifested in Latin American democratic transitions. During the 1980s there had been a change in the pattern of activity within the international human rights regime. A growing number of NGOs were engaged in monitoring human rights violations and taking part in the struggles for democratization. The growing transnational activism converged with domestic public opinion and made the Southern European model of collective amnesia undesirable and unfeasible in the Latin American context. At the same time, the Latin American democratic transitions were negotiated transitions, in which the political conditions during and following the transition left former regime members in positions of power. This reality placed obvious political and practical constraints on the new regimes' ability to prosecute and punish members of the former regimes.

Out of the impossibility of the two options – collective amnesia and punishment – the truth commission option emerged as a compromising alternative. For many local activists and leaders it was conceived as a second-best solution stemming out of political and practical constraints, as illustrated by the Argentinean and Chilean truth commissions. At the same time, however, truth commissions were not simply a

³² Raul Alfonsin, "Never Again in Argentina," *Journal of Democracy* 4, no. 1 (1993): 18.

compromise; they were tailored to respond to the unique form of repression in Latin American countries, which included the infamous method of disappearances. The fact-finding purpose of these commissions came to address a real need to discover the fate of numerous victims of the former regime. Accordingly, for many scholars and practitioners the truth commission option was mostly deemed appropriate for situations where there was legacy of disappearances and where the transition was negotiated. Beyond the regional context, the Latin American truth commissions had limited universal legacy and widely perceived by locals as inappropriate for other transitional setting, such as the transitions in Eastern Europe in the late 1980s and early 1990s.

The International Human Rights Regime: NGOs and Truth-Exposure Methodologies

During the “third wave of democratization” (mid-1970s to early-1990s) human rights concerns moved beyond the United Nations and other intergovernmental settings. Many new national and international NGOs, such as Amnesty International and Human Rights Watch focused their activities on human rights issues and established a growing network of transnational activism. These NGOs focused on exposing and documenting human rights violations. Amnesty International (established in Britain in 1961) issued its first report on prison conditions in Portugal in 1965.³³ Initially, however, the transitions to democracy marked the end of these NGOs’ activities in a specific country. There was no attention to how the new regime dealt, if at all, with the legacy of past human rights violations. As noted by José Zalaquet, “by and large, the mainstream human rights activities continued to be documenting human rights violations, demanding their cessation and defending victims. The focus of human rights activism was on current

³³ *The History of Amnesty International*, (accessed March 22 2009); available from <http://www.amnesty.org/en/who-we-are/history>.

abuses and only seldom on past abuses or on preventing the recurrence of human rights violations.”³⁴

During the 1980s human rights NGOs changed the ways they conceived their activities. They began focusing more on human rights issues related to political transitions and “they no longer look strictly for the facts that constitute a violation of a universal standard, but trace how governmental institutions respond to each episode.”³⁵ In many of the liberation struggles, specifically in Latin America, human rights were a rallying theme. The undemocratic regimes’ method of disappearances lent itself to investigative activity. Human rights NGOs, both local and international, cooperated with opposition forces (for example, in Argentina and Guatemala) and their involvement continued once these groups assumed power as the new regime.³⁶ Leading this trend were Amnesty International and Human Rights Watch.³⁷ These NGOs revived the Nuremburg model and began lobbying for domestic prosecutions following transitions. They viewed their documentation strategies as ways to engender political transition but also as a source of valuable information for post-transition justice.

All in all, the 1980s brought about a new pattern of activity within the international human rights regime. International and local NGOs significantly expanded their atrocities’ exposure activity and also moved into monitoring the transition as well as the ways in which new regimes deal with the legacy of the human rights violations. This

³⁴ Jose Zalaquett, “Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints,” in *State Crimes: Punishment or Pardon* (Wye Center, MD: The Justice and Society Program of the Aspen Institute, 1989), 24.

³⁵ Juan E Mendez, “Accountability for Past Abuses,” *Human Rights Quarterly* 19, no. 2 (1997): 255.

³⁶ Jose Zalaquett, “Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints,” in *State Crimes: Punishment or Pardon* (Wye Center, MD: The Justice and Society Program of the Aspen Institute, 1989).

³⁷ Human Rights Watch was established in 1988 by the union of two earlier NGOs: the Helsinki Watch (1978) and the Americas Watch (1980).

pattern of activity set the foundations for a transnational advocacy network that argues against impunity in transitional contexts.

*Initiating Compromise: The Argentinean National Commission on the Disappeared*³⁸

During the seven years of military rule in Argentina (1976-1983), the military regime abducted, tortured, and killed some 10,000 to 30,000 individuals in its so-called “dirty war” against political opponents. The United Nations, foreign governments, and international human rights NGOs widely condemned the Argentinean “dirty war.”³⁹ There was also a significant domestic human rights campaign; notably, the *Madres de la Plaza de Mayo*, who demonstrated every week beginning in April 1977 in front of the Presidential Palace demanding information about their “disappeared” loved ones. Following Argentina’s defeat in the 1982 Falkland-Malvinas war and consequent mounting public pressure, the junta regime collapsed and in December 1983 Argentina held democratic elections.

Elected President Raul Alfonsin, campaigned with a human rights agenda and specifically with the promise to investigate the fate and whereabouts of the disappeared. Indeed, soon after he was elected President Alfonsin established the National Commission on Disappeared Persons (CONADEP), with a mandate to investigate the

³⁸ Two commissions preceded the Argentinean truth commissions. The first commission was the *Commission of Inquiry into Disappearances of People* in Uganda that was established by Idi Amin in 1971/4. While the commission conducted some serious investigations, the goal and outcome were largely a political sham. The other early commission is the *National Commission of Inquiry into Disappearances in Bolivia* (1982). The commission was disbanded without completing its investigation or issuing a report. Therefore, the Argentinean truth commission may be considered the first “real” truth commission.

³⁹ In 1978 the United Nations General Assembly issued Resolution 33/173 calling for an investigation into the method of disappearances *United Nations General Assembly Resolution, 33/173. Disappeared Persons*, (1978 accessed July 15 2008); available from <http://www.un.org/documents/ga/res/33/ares33r173.pdf>.

disappearances. Alfonsín's human rights policy also included the repeal of the amnesty law⁴⁰ and the decision to prosecute former junta members.

The National Commission, headed by the prominent intellectual Ernesto Sabato, was designed to serve as a preparatory stage for forthcoming criminal prosecutions. One of the main goals of the commission, according to President Alfonsín was to contribute to the establishment of the rule of law.⁴¹ The commission's hearings were in a quasi-court format and the commission was to offer, according to its mandate, its information to the courts. The final report presented a detailed description of the junta's repressive strategies, and the investigation files came to be the evidential basis for criminal charges and reparations programs. Immediately after the release of the report (September, 1984) the trials began. Despite the fact that the junta had been politically ousted, its members maintained enough control over political resources to exert pressure and to derail criminal prosecutions. The trials were soon blocked by the 1986 and 1987 amnesty laws and the few officers that were convicted were pardoned in 1989-1990 during the Presidency of Carlos Menem. In the end, the investigatory commission remained for long the main tool with which Argentina accounted for its legacy of past human rights violations.

Adding Reconciliation: The Chilean National Commission on Truth and Reconciliation

The December 1989 elections marked the end of General Augusto Pinochet's seventeen years of military rule in Chile. Like in Argentina, accountability for the Pinochet regime's human rights violations was an important part of the election campaign. However, members of the former military regime still had significant power

⁴⁰ President General Reynaldo Benito Bignone passed the Argentinean amnesty law – The Law of National Pacification – just five weeks before the elections. The law granted immunity from investigation and prosecution to all military and political officers for all actions between May 25, 1973 and June 17, 1982.

⁴¹ Raul Alfonsín, "Never Again in Argentina," *Journal of Democracy* 4, no. 1 (1993): 16.

and overtly threatened to use violence if prosecutions were pursued. Out of concern for the fragility of Chile's new democracy, President Patricio Aylwin decided not to repeal the 1978 amnesty law passed by the Pinochet government. Instead, Aylwin stayed with his campaign proposal for a National Commission on Truth and Reconciliation.

President Aylwin's caution and pragmatic approach was also reflected in the scope of the Commission's mandate. The Chilean TRC's mandate was limited to the "most serious human rights violations" of death and disappearances, and did not include imprisonment, torture, and exile. In its nine months of operations the commission investigated over 4000 complaints of deaths and disappearances during the 17 years of military rule. All of its hearings were held in private and the names of perpetrators were withheld. While limited in its investigatory scope, the Chilean TRC did present, at least in principle, broader goals. In addition to a comprehensive clarification of disappearances and killings, the Commission's Decree included the goals of recommendations for reparations schemes, recommendations for prevention measures, and for reconciliation.⁴²

Indeed the Chilean commission recommended an extensive reparation policy and had proposed institutional, educational, and legal reforms. The goal of reconciliation, in particular, became a symbolic aspect of the commission's work. When the commission's report was completed in February 1991, President Aylwin unveiled it in a public spectacle held in the infamous known for the arrest and abuse of many during the Pinochet regime. He also sent a copy of the Truth Commission's report to each victim's family along with a personal letter of apology.

⁴² Chile Undersecretary of Interior, "Creation of the Commission on Truth and Reconciliation," Supreme Decree No. 355, April 25, 1990," (Executive Branch, Ministry of Justice, 1990). The main goals for the commission are presented in Article One of the Decree.

That said, the theme of reconciliation remained largely at the symbolic level. The Chilean TRC was mostly a fact-finding commission and not an innovative model for social or political reconciliation. This feature is best reflected in the Commissions' report. The final report provided a detailed description of the operational aspects of repression under Pinochet. Out of the report's 2000 pages only the last fifty pages consider the other three goals of reparations, prevention, and reconciliations. One short essay titled "Truth and Reconciliation" calls for the exploration of "avenues for reconciliation" in the future.⁴³ Also with regard to victims, while the commission expressed commitment to the victims and their stories, the tone of the victims' testimonies in the report is largely "formal, abstract and legalistic."⁴⁴ In sum, while somewhat more expansive in its goals the Chilean TRC was more similar than different from the Argentinean National Commission and represented a minimal investigatory missions.

The Latin American Experience Overall: The Limits of Political Compromise

Between 1980 and 1994, eleven countries in Latin America transitioned from authoritarian to democratic regimes. In eight of these cases there was a truth commission of some sort.⁴⁵ In all of these cases, the truth commission option represents both a

⁴³ David Weissbrodt and Paul W Fraser, "Report of the National Commission on Truth and Reconciliation, Book Review," *Human Rights Quarterly* 14, no. 4 (1992).

⁴⁴ Teresa Godwin Phelps, *Shattered Voices: Language, Violence and the Work of Truth Commissions* (Philadelphia, PA: University of Pennsylvania Press, 2004), 93.

⁴⁵ Before the South African TRC there were sixteen truth commissions beginning in 1974. These commissions include: Uganda (1974); **Bolivia (1982)**; **Argentina (1983)**; **Uruguay (1985)**; Zimbabwe (1985); Uganda (1986); The Philippines (1986); **Chile (1990)**; Chad (1990); Nepal (1990); **El Salvador (1992)**; Germany (1992); **Honduras (1993)**; **Haiti (1994)**; Sri Lanka (1994); **Guatemala (1994)**; Burundi (1995). Eight commissions (in bold) were in South/Latin America. Most of the early truth commissions outside the regional context of Latin America were fact-finding commissions. According to Mark Freeman, their practice (in Uganda, Zimbabwe, Nepal, and Sri Lanka) can be traced to the legacy of British rule in these countries. It was a common practice in the United Kingdom to issue inquiry commissions (Commonwealth Commissions) in order to investigate public controversies. Freeman compares the official mandates of these commissions and finds that they were similar to the mandate of the Commonwealth Commissions. Accordingly, one may even conclude that these commissions are not part of the new

pragmatic and conceptual middle ground solution between trials and “doing-noting” about the legacy of human rights abuses.⁴⁶ Three characteristics explain the popularity of truth commissions in the South/Latin American region. First, transitions in Latin America were negotiated transitions and raised the question of “how to balance the demands of justice against the many, mainly political, constraints that make prosecution and major risk to the new regime.”⁴⁷ The emphasis is on the need for achieving a political compromise; that is, balancing between popular calls for justice and the need to co-opt and tame members of the previous regime who still hold power over military and economic resources. Accordingly, the truth commission alternative was a matter of political necessity. Conceptually, this characteristic supported a negative rationale: we have a truth commission because trials – the “superior” option – are not feasible in our transitional setting. Accordingly, the truth commission option was portrayed as a quasi-judicial alternative, selected by default.⁴⁸ Indeed, many in Latin America had been viewing the truth commissions as a preparatory stage for domestic trials, even if these trials might only be feasible in the distant future.

Second, the truth in itself was an important dimension of the Latin American cases because deniability was integral aspect of the repression.⁴⁹ Most of the abuses, such

phenomenon of truth-seeking commissions but the remnants of an old and unrelated practice. Mark Freeman, *Truth Commission and Procedural Justice* (Cambridge, UK: Cambridge University Press, 2006), 22-25.

⁴⁶ Henry J Steiner, "Truth Commissions: Comparisons and Doubts," in *Settling Accounts? Truth, Justice and Redress in Post-Conflict Societies* (Weatherhead Center for International Affairs, Harvard University: 2004).

⁴⁷ Luc Huyse, "Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past," *Law and Social Inquiry* 20, no. 1 (1995): 54.

⁴⁸ Richard Lewis Siegel, "Transitional Justice: A Decade of Debate and Experience," *Human Rights Quarterly* 20, no. 2 (1998).

⁴⁹ Aryeh Neier, the former Executive Director of Human Rights Watch, provides the following account: “They took their victims to secret detention centers, killed them in secret, disposed of their bodies in clandestine manner and denied the families any information about the fate of the victims. Everything about a disappearance was calculated for purpose of deniability,” see Aryeh Neier, "Chapter one: Why Deal with

as the disappearances, detentions, and the killings by anonymous “death squads” were designed to be secretive and went unacknowledged, which created a real need for an investigatory process. Third, even prior to many of the transitions, there was close cooperation between opposition forces and human rights NGOs. As was noted earlier, these NGOs primary methodology was the investigation and monitoring of human rights violations. This methodology and the information already available from these NGOs shaped the way in which local leaders thought about tools for addressing the former regime’s abuses.⁵⁰ The case of Brazil demonstrates that the fact-finding rationale was central. Once this rationale was absent – in Brazil due to the fact-finding report made by the Archdiocese of San Paolo (1985) – an official truth commission was deemed as unnecessary.⁵¹

Truth commissions already held the potential for boarder political and social positive outcomes. Some argued, for example, that truth commissions would enhance the legitimacy, credibility, and accountability of the new regime by placing it in negation to the previous repressive one. Others voiced the potential psychological benefits of a truth-

the Past? (Keynote Speakers)," in *Dealing with the Past: Truth and Reconciliation in South Africa*, ed. Alex Boraine, Daniel Levy, and Ronel Scheffer (Cape Town, South Africa: Institute for Democracy in South Africa, 1994), 5.

⁵⁰ In Chile, for example, the Committee for Cooperation for Peace (COPACHI) and later the Vicariate of Solidarity worked in close contact with NGOs, such as Amnesty International and World Council of Churches, see Stephen C Ropp and Kathryn Sikkink, "International norms and domestic politics in Chile and Guatemala," in *The Power of Human Rights: International Norms and Domestic Change*, ed. Thomas Risse, Stephen C Ropp, and Kathryn Sikkink (Cambridge, UK: Cambridge University Press, 1999).

⁵¹ The work on the Nunca Mais (Never Again) project in Brazil was carried out by team of volunteers, who were members of various church organizations. It documented the stories of 17,000 victims and 1,800 torture episodes between 1964 and 1979. It relied on official regime records and some interviews. Lawrence Weschler, *A Miracle, a Universe: Settling Accounts with Torturers* (New York, NY: Pantheon Books, 1990).; Margaret Eletta Guider, "Reinventing Life and Hope: Coming to Terms with Truth and Reconciliation Brazilian Style," in *Reconciliation, Nations and Churches in Latin America*, ed. Ian S Maclean (Burlington, VT: Ashgate, 2006).

telling process to victims of torture.⁵² And as was mentioned above, the Chilean TRC also introduced the potential for reconciliation. However, in all of the Latin American commissions these broader political and social positive outcomes were not integrated into the truth commissions' design and operation.⁵³ These goals remained symbolic, at best, and appeared only in the recommendation section of the reports.

In sum, by the early 1990s truth commissions were largely a regional institution. They were deeply embedded and contextualized within the specific political conditions and types of human right violations in Latin America. Within the region there was an apparent dynamic of emulation and institutional transfer. However, there were no claims for universal applicability and there was no indication that there is a normative phenomenon in the making. If there was any general perception formulating about the Latin American commissions, it was that they may have been "a poor alternative to justice."⁵⁴ Legal scholars, specifically, were concerned that this model might spread to other settings.⁵⁵ Therefore, many in the human rights community sought to counter this potential trend by renewing their emphasis on justice by punitive measures.

⁵² Margaret Popkin and Namoi Roht-Arriaza, "Truth as Justice: Investigatory Commissions in Latin America," *Law & Social Inquiry* 20, no. 1 (1995): 114.; Becker et al, analyze the work of the Latin American Institute of Mental Health and Human Rights in Santiago, Chile and find that testifying their story helped victims to psychologically cope with their personal past, see David Becker et al., "Therapy with Victims of Political Repression in Chile: The Challenge of Social Reparation," *Journal of Social Issues* 46, no. 3 (1990): 149.

⁵³ The El Salvadoran and the Honduran truth commissions followed the Chilean model and set reconciliation as a goal in their mandate. In practice, the report reflects largely the investigatory goal. Like in the Chilean commission, reconciliation is only referred to in the recommendations as something to be pursued in the future, see Mike Kaye, "The Role of Truth Commissions in the Search for Justice, Reconciliation and Democratization: The Salvadorean and Honduran Cases," *Journal of Latin American Studies* 29, no. 3 (1997).

⁵⁴ Juan E Mendez, "Accountability for Past Abuses," *Human Rights Quarterly* 19, no. 2 (1997): 267. (commenting specifically on the El Salvadorian Commission)

⁵⁵ Ian S. Maclean, "Truth and Reconciliation: Hope for the Nations or only as Much as is Possible? In Ian S. Maclean, *Reconciliation, Nations and Churches in Latin America* Burlington VT: Ashgate, 2006. pp. 3-39. Ian S Maclean, "Truth and Reconciliation: Hope for the Nations or Only as Much as is Possible?," in *Reconciliation, Nations and Churches in Latin America*, ed. Ian S Maclean (Burlington VT: Ashgate, 2006). A. James McAdams' 1997 edited volume, *Transitional Justice and the Rule of Law in New*

The Logic of Inappropriateness: Eastern European Transitions

As was noted above, truth commissions of the 1980s and early 1990s had very specific rationales and were closely tied to the Latin American context. This fact becomes most obvious in light of the absence of truth commissions in Eastern Europe's democratic transitions. The legacy of human rights violations by the former Communist regimes was also a concern in these transitions.⁵⁶ However, the context of repression there did not produce conditions for the adoption of truth commissions. Communist repression was mostly civil-political and had less to do with physical harm so the establishment of criminal responsibility was very unlikely in most cases. Moreover, most of the human rights violations occurred in the early years of Communist regimes (1950s-1960s) and were subject to the statute of limitation. Given that criminal prosecutions were highly unlikely, one could imagine that the truth commission option could be adopted or at least seriously considered. Yet, this was not the case.

In general, the absence of truth commissions from these transitions reflects the consensus about them at the time; namely, that they were a region-specific institution, suitable for specific types of political conditions (i.e., negotiated transition) and for a specific type of human rights violations (i.e., disappearances and their deniability). In contrast, the Eastern European transitions followed the collapse of the Soviet Union, which left the Communist regimes in some Eastern European countries depleted of their political resources. Consequently, there were no real political incentives for a

Democracies (1997) is a good example for criticism that came from the legal community. Most, if not all of, the essays in this volume dismiss the truth commissions' "flawed model" A. James McAdams, ed., *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame, IN: University of Notre Dame Press, 1997).

⁵⁶ For example, Adam Michnik, the Polish opposition leader, and Vaclav Havel, the Czech opposition leader and the first post-transition President, write about the dilemmas of dealing with the past, see Adam Michnik and Vaclav Havel, "Confronting the Past: Justice or Revenge?," *Journal of Democracy* 4, no. 1 (1993).

compromise, which was the main rationale for truth commissions. In addition, a common argument was that truth commissions cannot address the time-span (forty five years) and the totality of the Communist repression. While such commissions may be suitable for investigating and exposing the details of specific cases of abuse, they could not capture the society-wide and institutionalized character of Communist repression.⁵⁷ This kind of repression prevailed in every aspect of public and private life and was implemented not only by regime or party member but also by next-door-neighbors who informed on each other.⁵⁸

The one Eastern European exception is the rather insignificant German *Study Commission for the Assessment of History and Consequences of the Socialist Unity Party Dictatorship in Germany* (the Enquete Kommission), which was established in 1992.⁵⁹ The transition in East Germany, to a great extent, was designed and facilitated by West Germany, which in its effort to assure as smooth a unification as possible applied all available accountability mechanisms (including, criminal trials, disqualification of administrative personnel, restitution of private property, and the Parliamentary truth commission). The commission was by no means the most important of these mechanisms and most Germans were not even aware of its operation.⁶⁰ In a sense, the East German commission is the exception that proves the rule: that truth commissions in the early

⁵⁷ Helga A Welsh, "Dealing with the Communist Past: Central and East European Experiences after 1990," *Europe-Asia Studies* 48, no. 3 (1996).

⁵⁸ Some Eastern European countries chose to do nothing (Hungary, Bulgaria); some chose trials (Romania); and some a policy of lustration (Poland, the Czech Republic). In several cases the demand for "truth" was met by the opening of the files of the secret police as well as by many documentation projects. Roman David and Susanne Choi Yuk-ping, "Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic," *Human Rights Quarterly* 27, no. 2 (2005).

⁵⁹ Hermann Weber, "the History of the German Democratic Republic: The Work of the Commission of Inquiry," in *Rewriting the German Past: History and Identity in the New Germany*, ed. Reinhard Alter and Peter Monteath (Atlantic Highlands, NJ: Humanities Press, 1997).

⁶⁰ A. James McAdams, *Judging the Past in Unified Germany* (Cambridge, UK: Cambridge University Press, 2001).

1990s are conceived as a limited fact-finding mechanism, which at best may lessen the political risks faced by the transitioning state.⁶¹

Conceptual Developments: Knowledge as Acknowledgment

Before the truth commissions in Latin America, there was no significant body of knowledge that considered the potential interlinks between human rights legacy and political transition. The first scholarly work to raise these issues was John H. Hertz's edited volume *From Dictatorship to Democracy: Coping with the Legacies of Authoritarianism and Totalitarianism*.⁶² During and following "Third Wave" transitions scholarly interest caught up with reality. Scholars paid more attention to the theoretical and practical dimensions of transitional justice. In this process, two events were particularly influential: The Aspen Institute's *States Crimes: Punishment or Pardon* conference and the *Justice in Times of Transition* project. They provided a setting for intellectual exchange that both reflected and shaped the consensus among scholars and practitioners about transitional justice, and particularly about the role of truth commissions within this emerging field of study and policy.

⁶¹ According to Molly Andrews, "[The Study Commission] was never intended as a means of collective catharsis. The project of the commission was not so much to heal a broken nation ... but rather one of setting the record straight. Its intended audience was never the people of East Germany ... but rather the Bundestag," Molly Andrews, "Grand national narratives and the project of truth commissions: a comparative analysis," *Media Culture & Society* 25, no. 1 (2003): 51.

⁶² John H Hertz, ed., *From Dictatorship to Democracy: Coping with the Legacies of Authoritarianism and Totalitarianism* (Westport, CT: Greenwood Press, 1982). For the sake of comparison, other leading scholarly works on democratic transition included merely a few pages or a short section dedicated to the issue of the legacies of human rights abuses, see Juan Linz and Alfred Stepan, eds., *The Breakdown of Democratic Regimes* (Baltimore, MD: John Hopkins University Press, 1978).; Guillermo O'Donnell, Phillipe Schmitter, and Whitehead Laurance, eds., *Transitions from Authoritarian Rule: Prospects for Democracy* (Baltimore, MD: John Hopkins University Press, 1986).

The conference *States Crimes: Punishment or Pardon* took place in November 1988 and was organized by the Justice and Society Program, at the Aspen Institute. The goal was to bring together scholars of philosophy, political science, and constitutional and international law, as well as human rights advocates and activists to “discuss the moral, political, and jurisprudential issues that arise when a government that has engaged in gross violations of human rights is succeeded by a regime more inclined to respect those rights.”⁶³ Over all, this conference made three significant contributions to the framing of future debates over truth-seeking commissions.

As the title of the conference indicates the starting point was the dichotomy between prosecution and punishment on the one hand and forgiving and forgetting on the other, that is, between Nuremburg and Spain. The discussants focused largely on arguments for and against punishment within the context of transition. Their arguments repeatedly reaffirmed the legal and moral supremacy of punitive measures and truth commissions were referred to as the lesser punitive option – a third way – emerging out of political and practical constraints within the transitional context.⁶⁴ As noted later by Luc Huyse, “most analysts argue that if the balance of forces at the time of transition makes a negotiated mildness inevitable, a truth-telling operation with full exposure of the crimes of the former regime is the least unsatisfactory solution.”⁶⁵ A notable exception was the presentation by Jose Zalaquett, a human rights lawyer and one of the central architects and leaders of the Chilean TRC, who articulated the idea that national unity

⁶³ Alice H Henkin, "Conference Report," in *State Crimes: Punishment or Pardon* (Wye Center, MD: The Justice and Society Program of The Aspen Institute, 1988), 1.

⁶⁴ For a review of arguments against retribution see Chapter 3.

⁶⁵ Luc Huyse, "Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past," *Law and Social Inquiry* 20, no. 1 (1995): 78.

and reconciliation are superior social goals than retribution, and would be better achieved by truth-seeking commissions.⁶⁶ In the conference context, however, Zalaquett's arguments were the outlier rather than consensus.

At the same time that truth commissions were regarded a weaker mechanism for attaining justice, exposing the truth about past repression was singled out. As noted by Alice Henkin, the Director of Justice and Society Program, "Although there were different views as to the extent of the obligation to punish, *there was common agreement that the successor government has an obligation to investigate and establish the facts* so that the truth be known and be made part of the nation's history."⁶⁷ In the discussions, the principle of truth-exposure was highlighted as a requirement for justice, a way to prevent future revisionism, a tool for national reconciliation, and a way to prevent punishment from being viewed as revenge and justice a mere partisan considerations.⁶⁸ The importance of establishing the factual truth about past abuses was not necessarily linked to truth commissions at this conference. Trials and the opening of secret police files were brought up as suitable truth-revealing methodologies.

This conference's most significant conceptual development was the framing of the truth-seeking and truth-telling process in terms of acknowledgment. Thomas Nagel, a Professor of Philosophy and Law at New York University, offered a distinction between knowledge and acknowledgment. "[Acknowledgment] is what happens and can only happen to knowledge when it becomes officially sanctioned, when it is made part of the

⁶⁶ Jose Zalaquett, "Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints," in *State Crimes: Punishment or Pardon* (Wye Center, MD: The Justice and Society Program of the Aspen Institute, 1989).

⁶⁷ Alice H Henkin, "Conference Report," in *State Crimes: Punishment or Pardon* (Wye Center, MD: The Justice and Society Program of The Aspen Institute, 1988), 4-5. *Italic added.*

⁶⁸ Jose Zalaquett, "Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints," in *State Crimes: Punishment or Pardon* (Wye Center, MD: The Justice and Society Program of the Aspen Institute, 1989), 30-31.

public cognitive scene.”⁶⁹ According to Nagel, a truth-seeking process not only makes the facts of the abuses known, but also converts peoples’ private memory into a public national memory. Another participant, Lawrence Weschler, a staff writer of *The New Yorker*, also raised the issue of acknowledgment. Weschler reported on human rights violations in Brazil and Uruguay and interviewed many victims there. He argued that the public acknowledgment of the truth is more important to victims than punishment.⁷⁰

In retrospect, the Aspen Institute conference was “a path breaking event”⁷¹ as it was the first setting for ideas about transitional justice to be systematically exchanged and evaluated. From our vantage point of the conceptual genealogy of the truth-seeking principle, the conference set fourth the idea that truth-seeking is a state obligation during transition and that acknowledgment is a distinct goal. Both these ideas were novel at the time and would become, in the South African context, an important starting point for future framing of the morality and independent merits of truth-seeking commissions.

Justice in Times of Transition Project

The inaugural meeting of the “Justice in Times of Transition” project was held in Salzburg, Austria, in March 1992.⁷² The Project brought together policy-makers who participated in the Eastern Europe and Latin America transitions along with scholars and journalists, some of whom also participated four years earlier in the Aspen Institute. The

⁶⁹ Reported by Lawrence Weschler, “Afterword,” in *State Crimes: Punishment or Pardon* (Wye Center, MD The Justice and Society Program of The Aspen Institute, 1989).

⁷⁰ Ibid.

⁷¹ Martha Minow, “interview by the author, tape recording,” (Harvard Law School, Cambridge, MA); Neil J Kritz, “Where We are and How We Got Here: An Overview of Development in the Search for Justice and Reconciliation,” in *The Legacy of Abuse: Confronting the Past, Facing the Future*, ed. Alice A Henkin (Washington DC: The Aspen Institute, 2003), 22.

⁷² Mary Albon, “Project on Justice in Times of Transition: Report of the Project’s Inaugural Meeting,” in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, ed. Neil J Kritz (Washington DC: United States Institute of Peace, 1995).

project continued operating under the auspices of the Rule of Law Initiative at the United States Institute of Peace. It yielded a three-volume collection with the goal of raising the profile of scholarship on transitional justice.⁷³ Indeed, *Transitional Justice* (Neil J. Kritz, ed.) has become the most important publication in the emergent field of transitional justice. The first volume deals with the conceptual dimensions of transitional justice, the second volume covers twenty-one cases of transitions since World War II, and the third volume includes relevant primary documents.

Conceptually, the publication had three general themes. First, that transitional justice is inseparable from the process of democratization and democratic consolidation as it “[highlights] the division between the former regime and the new one, while installing confidence in the new regime.”⁷⁴ Second, the rule of law is central to democracy and democratization. Like in the Aspen Institute conference, the starting point is the dichotomy between punishment and pardon and truth commissions emerge out of this dichotomy. It is a way to achieve justice, or “partial justice,” within political constraints. The centrality of the rule of law is evident when considering the space allocated in the publication for truth commissions relative to other retributive measures, and specifically trials. The section about truth commissions is relatively short and echoes the arguments presented in the Aspen Institute conference. The analytical sections as well as the examples for the retributive approach are markedly more extensive and present at length the arguments by leading legal and human rights scholars.

⁷³ Charles Duryea Smith, "Introduction," in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, ed. Neil J Kritz (Washington DC: United States Institute of Peace, 1995).

⁷⁴ Neil J Kritz, "The Dilemmas of Transitional Justice," in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, ed. Neil J Kritz (Washington DC.: United States Institute of Peace, 1995), xix.

Both the Aspen Institute and the “Justice in Times of Transition” project mark the initiation of the transitional justice body of knowledge and field of academic study. Their main significance is in bringing together academics and practitioners to discuss the legal, political, and moral aspects of addressing the legacy of human rights violations during and following democratic transition. At this point, apart from a few individuals (for example, Joze Zlaquatt and Lawrence Wschler) the transitional justice discourse is dominated by legal scholars, such as Juan Mendez, Aryeh Neier, and Diane Orentlicher. For these scholars, trials are the moral benchmark and the framing of truth commissions is largely shaped by “logic of default” as opposed to “logic of appropriateness.”

Concluding Discussion

The argument I make in this dissertation is that the international norm of truth-seeking emerged only following the South African TRC. This chapter addressed the challenge of demonstrating that before the South African TRC and the consolidation of the truth-seeking epistemic community the practice of and the rationales for truth commissions were significantly different from what they became later.

The practice of truth commissions began in the early 1980s in Argentina. There, the truth commission addressed the real need to find out information about the disappeared and to investigate the scope of the abuses. It was primarily intended as a preparatory stage for forthcoming criminal prosecutions. Due to political constraints the trials did not follow and the truth commission became, de facto, the main mechanism for addressing the legacy of human rights violations. This model prevailed in other Latin American transitions, such as Uruguay, Chile, and El Salvador. In these transitions, members of the former regime remained in positions of power and were able to ward off

attempts to hold them accountable for human rights violations. The truth commissions were the political compromise between the constraining power of the former regime and domestic and international demands for justice and accountability.

Conceptually, truth commissions occupied the middle-ground between prosecution and punishment, on the one hand, and pardon and forgetting on the other. The Nuremberg Trials established the universality of human rights and the principle that human rights ought to be protected by legal means. In addition, the trials established the link between justice and truth and democratic transition. In contrast to the Nuremberg legacy, the transitions in Portugal and Spain articulated a model of amnesty and collective amnesia. Truth commissions emerged as the “third way” out of this dichotomy.

Truth commissions had both positive and negative rationales. According to the positive rationale, a truth commission establishes an official and detailed account of the abuses and is also a mechanism for acknowledgment. Some also linked the process of truth-seeking to national reconciliation and even healing, ideas that will later become the principle rationales for truth-seeking commissions. However, at this point these arguments were the exception. The consensus was that truth commissions are primarily a fact-finding mechanism appropriate for situations in which human rights violations have been concealed or denied. This consensus prevailed across the board and is found in the mandates and practice of the Latin American truth commissions,⁷⁵ in the views of decision-makers,⁷⁶ in NGOs’ policy recommendations,⁷⁷ and in scholarly analysis.⁷⁸

⁷⁵ In his study of the commissions in Chile and El-Salvador, David Gairder finds that both the mandate and the report of these commissions do not endorse in any significant way the goals of reconciliation, healing, or moral restructuring, David Gairder, *Truth in Transition: The role of truth commissions in political transition in Chile and El Salvador* (Bergen, Norway: Chr. Michelsen Institute, 1999).

⁷⁶ For example, in 1995 a Rwandan Minister stated during the debate over the option of a truth commission for Rwanda that “We don’t really need truth – we know who did what.” Cited in Kenneth Christie, *The South African Truth Commission* (London, UK: Macmillan, 2000).

Beyond this positive rationale, the rationale for truth commissions has been primarily negative. Truth commissions are framed as the minimum that is feasible in light of political constraints and the potential for negative consequences of the punitive approach within the transitional context. All in all, by the early 1990s truth commissions are both a practical and conceptual compromise and a “weaker” solution, relative to trials, for addressing the legacy of gross human rights violations. This framing sets moral and practical constraints on the universal applicability of the truth-seeking principle by truth commissions. Truth commissions are supposedly suitable for specific type of political conditions (i.e., negotiated transition) and for specific type of human rights violations (i.e., disappearances and their deniability). Consequently, they were inappropriate for the transitions in Eastern Europe, where the repression was less violent yet cut across the whole society and where there were often no significant political incentives for compromise. In addition, the “weaker” moral standing of truth commissions marked them as particularly inappropriate for serious violations of human rights, such as the genocides in the former Yugoslavia and Rwanda.

Were the early truth commissions successful or seemingly successful? Several aspects of some commissions received positive evaluation by scholar and human rights practitioners (examples include: the *Nunca Mas* Report by the Argentinean commission;

⁷⁷ The International Institute for Democracy and Electoral Assistance published in 1998 a handbook that included a section about “Policies for Coping with the Past.” According to this handbook, the main goal of truth commissions “is to investigate the fate of individuals and of the nation as a whole.” Peter Harris and Ben Reilly, *Democracy and Deep-Rooted Conflict: Options for Negotiators* (Stockholm, Sweden: International Institute for Democracy and Electoral Assistance (IDEA), 1998).

⁷⁸ Margaret Popkin and Naomi Roht-Arriza study the commissions in Chile, El Salvador, Honduras, and Guatemala (which at the time of the article was in a proposal stage) and refer to them as different example of investigatory commissions. Even though they are writing after the Chilean commission, they do not identify reconciliation as a major goal for either of these commissions Margaret Popkin and Naomi Roht-Arriza, “Truth as Justice: Investigatory Commissions in Latin America,” *Law & Social Inquiry* 20, no. 1 (1995).

the reparation program that followed the Chilean commission's recommendations). However, since the main criterion for assessment was justice and the primary yardstick was trials, post-hoc evaluation of the Latin American commissions was largely critical. Accordingly, the demonstrative effect of the early truth commissions was somewhat limited and neither of these commissions constituted a "successful case" as specified by my theory.

What about the emergence of an epistemic community? Is it already emerging at this pre-norm stage? According to Ellen Lutz and Kathryn Sikkink the democratic transitions in Latin America consolidated the transitional justice network, which has mixed elements of an advocacy network and epistemic community. This network, led by lawyer activists, strengthened the principle of universal jurisdiction.⁷⁹ Indeed, by the early 1990s transitional justice emerges as a growing field of study and policy, which at that point fits the broader pattern of an advocacy network. The transitional justice network includes international and domestic human rights organizations, churches, public intellectuals and legal activists. The constituting aspect of this network is the shared normative belief that something needs to be done about the legacy of human rights abuses, particularly in transitional settings. Both the pattern of membership and activity and the normative agenda of this network are broad. The one apparent consensus is around the superiority of retributive measures, and of trials in particular. Thus, if there is an epistemic community at all, it is a legal one that is different from the one that would later lead to the emergence of the truth-seeking norm. As noted earlier, within the transitional justice network there are some, including Jose Zalaquett and Lawrence

⁷⁹ Ellen Lutz and Kathryn Sikkink, "The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America," *Chicago Journal of International Law* 2, no. 1 (2001).

Weschler for example, who depart from the consensus and raise new ideas about the independent rationales of truth-seeking processes. Yet, they and others will form a distinct truth-seeking epistemic community only during and following the South African TRC. Their debates with other members of the transitional justice network, particularly with legal human rights activists, play an important role in the consolidation of the truth-seeking principle.

Chapter 5

Reconciling Truth: The South African TRC

The early truth commissions in Latin America were essentially the outcome of a political compromise emerging from the need to balance the feasibility and stability of democratic transition and domestic demands for justice and accountability. In this chapter I argue that while the political dynamic that preceded the South African TRC were not much different; it has led to significant changes in the design, goals, and framing of truth-seeking commissions. In South Africa, the discourse of reconciliation and healing replaced the discourse of political compromise in a way that positively framed the truth-seeking process as a unique alternative to trials.

In the scheme of my general argument, this chapter focuses on the two conditional variables at the norm emergence stage: the ‘successful case’ and the ‘epistemic community.’ My analysis demonstrates how the rhetoric and perception of success of the South African TRC had made it an ideal-type model for all subsequent truth-seeking commissions. Moreover, I demonstrate how the TRC preparatory process facilitated the initial professional exchange and personal contacts among the truth-seeking epistemic community, who would later become the “supplier” of the international norm.

Keeping with the chronological organization of my empirical analysis this chapter focuses on the years 1992 to 1998. The first section draws attention to key developments in the post-Cold War international context, including: growing scholarly and practical interest in post-transition justice and reconciliation; growing legalization of the international human rights regime; and, the globalization of communication. Next, I turn to the South African domestic context and to the political negotiations that ended the

apartheid regime. Finally, I analyze the process in which the South African TRC took shape. In this process I emphasize the role of the preparatory conferences organized by Alex Boraine. In these conferences the South African TRC gained two types of unique features. The first type is institutional, including quasi-legal powers, scope of mandate, and transparency and publicity. The second type of unique features is those of content; specifically the idea of assigning the truth-seeking process with the goals of reconciliation and healing. These unique features, along with the perceived success of the TRC, account for some of its long-lasting and worldwide legacy as an ideal-type transitional justice mechanism.

The final section of the chapter focuses on the emerging truth-seeking epistemic community – its initial membership and pattern of activity as well as the main ideas shared by its members. Within the South African context, the salient dynamic I identify is reciprocal: the preparatory process of the TRC brought together the truth-seeking epistemic community and at the same time it was the epistemic community that accounts for the unique model of the TRC. In particular, the epistemic community accounts for the positive rationalization of the TRC model, primarily by framing it as a successful tool for achieving the distinct goals of national reconciliation and collective healing.

International Context

The truth-seeking norm did not just emerge and develop in a political or ideational vacuum. Rather, its emergence during and following the operation of the South African TRC was closely embedded in a specific international political and ideational context. This context is made of four important developments. The first development was the end of the Cold War, which marked the “ultimate victory” of the Western liberal-

democratic model. While the “third wave of democratization,” which begun in the mid-1970s, was not yet over, the end of the Cold War intensified the process of transitions to democracy worldwide and unleashed what has been termed as the “fourth wave of democratization.”¹ Consequently, there has been a growing interest in the study of “transitology” which also yielded the growing focus on the role of justice in these transitions.

The second development is changes in the pattern of violent conflicts. During the twentieth century there has been a shift from inter to intra-states conflicts, which currently make the majority of ongoing violent conflicts.² One important characteristic of intra-state conflicts, or civil wars, is the tactic targeting of civilian populations, including women and children, who account for more than 90% of the casualties – killed or injured – in post Cold War conflicts.³ At the same time, there has been a decline in the overall number of armed conflicts, many of which ended due to the end of the Cold War and the shifting geopolitical context on which many of them were dependent.

Combined together, the relative rise of intra-state conflicts and the cessation of many armed conflicts have led to widespread concern with reconciliation. Intra-state conflicts are often portrayed as related to communal identities and as either motivated or radicalized by racial, ethnic, religious or tribal identities.⁴ In these types of conflicts, historically-rooted hatred, emotions, group psychology and the lack of inter-group trust

¹ Michael McFaul, "The Fourth Wave of Democracy and Dictatorship: Noncooperative Transitions in the Post Communist World," *World Politics* 54, no. 2 (2002).

² *CONFLICTBAROMETER 2005*, (Heidelberg Institute for International Conflict Research (HIK), Department of Political Science, University of Heidelberg, accessed July 15 2008); available from <http://www.hiik.de/en/barometer2005/ConflictBarometer2005.pdf>.

³ Roy Gutman and David Rieff, "Preface," in *Crimes of War: What the Public Should Know* ed. Roy Gutman and David Rieff (New York, NY: W. W. Norton and Co. , 1999), 10.

⁴ David A Lake and Donald Rothchild, eds., *The International Spread of Ethnic Conflict* (Princeton, NJ: Princeton University Press, 1998).

are either the causes or important contributing factor to increased levels and scope of violence. Accordingly, reconciliation has been increasingly emphasized, by scholars, conflict resolution practitioners, and politicians as a way of accounting for the identity-based dimensions of these conflicts and resolving them. Such reconciliation is all the more important as the different identity groups are expected to share a territory and a political system in their post-conflict future. In contrast to the post-WWII and post-Holocaust focus on how to prevent horrors of such magnitude, the new “science” of reconciliation emphasized both the normative-philosophical and political-pragmatic justifications for national reconciliation.⁵

The globalization of communication, especially the so-called “CNN effect,” is the third relevant development in the international context. In the worldwide news media, atrocities are reported in nearly real-time drawing more attention and raising more interest in addressing to human rights abuses. Globalization of the media also augments international learning. During political processes, including democratic transitions, states learn from the experiences of other states as they are covered by the international media.

The fourth important development is the ongoing expansion of the international regime of human rights since the end of WWII, including legal and social norms, institutions, and enforcement mechanisms.⁶ Particularly important is the growth both in number and scope of the human rights non-governmental sector. Organizations, like Human Rights Watch and Amnesty International, which in the 1970s and 1980s focused

⁵ Carol A.L. Prager and Trudy Govier, eds., *Dilemmas of Reconciliation: Cases and Concepts* (Waterloo, ON: Wilfrid Laurier University Press, 2003).

⁶ In the case of the truth-seeking norm, the international human rights regime exemplifies Robert Axelrod’s concept of metanorms. Metanorms are diffused normative structures that shape particular actors and institutions on the international stage. They represented general normative ideals and provide the context in which specific norms emerge Robert Axelrod, “An Evolutionary Approach to Norms,” *American Political Science Review* 80, no. 4 (1986).

mainly on tracking and publicizing human rights violation, shifted into more proactive strategies and the formation of transnational advocacy coalitions. These coalitions have gained influence and created new pressures, both international and domestic, for addressing questions of justice following gross human rights violations.⁷ The end of the Cold War played an important role in this dynamic as it “reduced the tendency of superpowers to justify violations of human rights committed by themselves or their allies. This deprived repressive regimes and dictators of powerful political support and opened the space for creative strategies to scrutinize and hold them accountable for their conduct.”⁸

Within the international regime of human rights there has been an important trend of growing legalization.⁹ Lawyers and legal professionals have assumed an increasingly prominent role in the international human rights movement. They campaigned for the prosecution of human rights violators in either national or international courts. The events in Bosnia and Rwanda, in particular, brought forward the parallel between these current events and the Holocaust and the legacy of Nuremberg Trials. Questions of universal jurisdiction in cases of human rights violations came to the top of the human rights movement’s agenda, which has become an important advocate for International war crimes tribunals and the International Criminal Court.¹⁰

⁷ Neil J Kritz, "Progress and Humility: The Ongoing Search for Post-Conflict Justice," in *Post-Conflict Justice*, ed. M. Cherif Bassiouni (Ardsley, NY: Transnational Publishers, Inc., 2002), 57.

⁸ Paul Van Zyl and Mark Freeman, "The Legacy of Abuse: Conference Report," in *The Legacy of Abuse: Confronting the Past, Facing the Future*, ed. Alice H Henkin (Washington DC: The Aspen Institute, 2002), 14.

⁹ Kenneth W Abbott et al., "The Concept of Legalization," *International Organization* 54, no. 3 (2000).; Ruti G Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Journal* 16 (2003).; Gary Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton, NJ. : Princeton University Press, 2002).

¹⁰ Daniel Levy and Natan Sznaider, "The Institutionalization of Cosmopolitan Morality: The Holocaust and Human Rights " *Journal of Human Rights* 3, no. 2 (2004).

By themselves, or even combined, the above developments in the international context do not describe or explain neither how the truth-seeking principle has emerged nor the course it has taken. Nevertheless, these developments define an international context in which there is: first, a general scholarly and practical interest in post-transition justice as well as in post-conflict reconciliation; second, media-rich environment, where information moves fast and is accessible; and finally, a consensus, especially among human rights activists, that human rights violations should be dealt within the court. The South African TRC was influenced by and responded to this international context.

The Origins of the South African TRC

The objectives of the Commission shall be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past.¹¹

Since its inception (1995), the South African TRC had been assigned with a set of quite ambitious goals. How did the TRC come to acquire such ambitious goals? How was it different from previous truth commissions and what model did it create for subsequent ones? To answer these questions I focus here on the origins of the South African TRC tracing how the decision to establish a truth commission took shape during the political negotiations that ended the apartheid regime. What specifically stand out are the unique features, both in terms of institutional design and goals, which developed during the preparatory process. These unique features singled-out the South African TRC and contribute to its on-going influence.

¹¹ "The Promotion of National Unity and Reconciliation Act, 1995, (Act 95-34, 26 July 1995)," (Office of the President, Republic of South Africa, 1995).

Brief History Leading to the TRC

The electoral victory of the National Party (NP) in the 1948 South African elections marked the official beginning of the apartheid regime. In effect, these elections legalized and institutionalized the racial segregation that has been established in almost 350 years of economic and political dominance. As soon as it took office, the new apartheid regime enacted new laws excluding non-whites from most domains of life and a policy of displacement and resettlement of black South Africans.¹²

An opposition movement, which included the African National Congress (ANC), the Pan African Congress (PAC), and the South African Communist Party (SACP) initially, used mostly peaceful tactics such as protest and strikes. The apartheid government forcefully suppressed this opposition and enforced harsher measures, including the imprisonment of many opposition leaders. The increased repression has led to the establishment of the ANC armed wing in the early 1960s, which operated against military and government targets. Following the Soweto uprising (June, 1976) armed struggle shifted against the government. Violence and repression continued to escalate over the next decade.¹³

By the mid-1980s the vulnerability of the governing National Party was obvious, as several black townships were virtually outside the reach of government and the economy was stumbling due to widespread boycotts and strikes. These domestic pressures conjoined with broad international condemnation of the apartheid regime,

¹² Laws included the prohibition of mixed marriages, residential separation, and exclusion from public amenities, including restaurants, hospitals, schools and more. The displacement policy refers to the establishment of Bantustans in the rural areas, where blacks were to live according to tribal identity.

¹³ For the history of South Africa see, Nigel Worden, *The Making of Modern South Africa* (Oxford, UK: Blackwell, 1996). Also, the historical background chapters in: Kenneth Christie, *The South African Truth Commission* (London, UK: Macmillan, 2000).; Lyn S. Graybill, *Truth and Reconciliation in South Africa: Miracle or Model?* (Boulder, CO: Lynne Rienner Publishers, 2002).

which began in the early 1960s and peaked in the mid-1980s with the adoption of major bilateral and multilateral economic sanctions.¹⁴

The convergence of intense international pressure with domestic civic and violent resistance created a real movement towards political change. Supported by international mediation, the government and the ANC began private negotiations in 1986. In February 1990, President F. W. de Klerk removed some of the political restrictions, including the ban on opposition parties and the release, after twenty-seven years in prison, of ANC leader Nelson Mandela. De Klerk also lifted media restrictions and called for open negotiations.

The negotiations between the government and the ANC had three main sticking-points: first, the cessation of violence and repression, which continued during the negotiations; second, the power structure of the future South African regime; third, the question of how to deal with leaders and officials of the apartheid regime. In order to break the deadlock, President de Klerk introduced a proposed power-sharing. This proposal included an amnesty bill that precluded the prosecution of apartheid officials. The opposition parties strongly opposed the amnesty bill demanding that “violators be named and put on trial,” which essentially echoed the popular demand of the majority of

¹⁴ As early as 1969 the United Nations declared apartheid as “crime against humanity.” In 30 November 1973, the General Assembly Resolution 3068 declared the International Convention on the Suppression and Punishment of the Crimes of Apartheid followed by de-facto expelling South Africa from the UN and its agencies Audie Klotz, *Norms in International Relations: The Struggle Against Apartheid* (Ithaca, NY: Cornell University Press, 1995).

South Africans.¹⁵ For example, in the initial negotiations the ANC supported a United Nations' initiative for a tribunal on apartheid.¹⁶

Accordingly, the introduction of the truth commission option into the negotiations was by no means trivial. How then it become viable? Two important precedents contributed to the consideration of this option in the negotiations.¹⁷ The first precedent was the Commission of Inquiry into Public Violence and Intimidation (1991-1995). The Goldstone Commission (named after its president Justice Richard Goldstone) was appointed to investigate violent events that took place during the negotiations.¹⁸ The commission held over forty inquiries and in many cases produced sufficient evidence of human rights violations. The credibility, the positive reputation, and the wide public acceptance of the commission's work introduced the viability of an investigatory commission for the past events and created a political climate favorable of a truth commission at the national level.¹⁹

The second precedent was the ANC's own commissions of inquiry (1992, 1993). The ANC faced allegations that its use of violence in its training camps established a human rights record no better than that of the government. In an effort to politically

¹⁵ As reported by Barney Desai of the Pan Africanist Congress in a letter published in an undisclosed Cape Town newspaper, cited in Alex Boraine, "Introduction," in *Dealing with the Past: Truth and Reconciliation in South Africa*, ed. Alex Boraine, Janet Levy, and Ronel Scheffer (Cape Town, South Africa: Institute for Democracy in South Africa, 1994), xii.

¹⁶ Kader Asmal in a moderator comment in Alex Boraine, Levy Janet, and Scheffer Ronel, eds., *Dealing with the Past: Truth and Reconciliation in South Africa* (Cape Town, South Africa Institute for Democracy in South Africa, 1994), 34.

¹⁷ Bronwyn Anne Leebaw, "Judging the Past: Truth, Justice and Reconciliation from Nuremberg to South Africa" (PhD Dissertation, University of California, Berkeley, 2002), 194-213.

¹⁸ The commission investigated violent events such as assassinations and attacks on civilians by the political parties and by the security forces. Lynn Berat and Yossi Shain, "Retribution or Truth-Telling in South Africa? Legacies of the Transitional Phase," *Law & Social Inquiry* 20, no. 1 (1995): 175, fn. 138.

¹⁹ Richard J Goldstone, *For Humanity: Reflections of a War Crimes Investigator* (New Haven, CT: Yale University Press, 2000), 25-58.

contain these allegations the ANC set two investigatory commissions.²⁰ When the commissions found evidence of human rights violations, the ANC refused to pursue criminal prosecution yet accepted collective responsibility. The experience of the commissions led many within the ANC to advocate a similar solution at the national level. Moreover, ANC leaders were anxious to set their own misconduct in the broader context of apartheid and opted for a solution that could be quicker to establish and at the same time sufficient in accounting for the scope of governments' use of violence.²¹

The precedents of investigatory commissions also drew attention to earlier truth commissions in Latin America making the option of a national South African truth commission even more viable. The ANC shifted its position in the negotiations; yet, ANC members still refused the amnesty bill proposed by the government. Instead, they favored the option of a conditional or partial amnesty along with a national truth commission. Both the national truth commission and the conditional amnesty (that is, conditioned on appearance in front of the commission and full disclosure) were principally agreed upon in 1993. However, there has been yet little to no details as to what were the goals, mandate, and specific operational guidelines of the commission.

²⁰ Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, NY: Routledge, 2001), 60-64.

²¹ Albie Sachs (member of the national executive of the ANC) in Alex Boraine, Levy Janet, and Scheffer Ronel, eds., *Dealing with the Past: Truth and Reconciliation in South Africa* (Cape Town, South Africa: Institute for Democracy in South Africa, 1994), 146. See also, Lynn Berat and Yossi Shain, "Retribution or Truth-Telling in South Africa? Legacies of the Transitional Phase," *Law & Social Inquiry* 20, no. 1 (1995): 183.; Alex Boraine, *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission* (New York, NY: Oxford University Press, 2000), 260.

One example for this shift is the position of Kader Asmal, a Professor of Human Rights Law at the University of Western Cape. In the late 1980s Asmal worked for more than two years with the United Nations on the initiative for an international tribunal against apartheid. Yet, when he joined the negotiations with the government as an ANC member his position changed and he became one of the most important advocates of the truth commission option during the negotiations. See in, Desmond Mpilo Tutu, *No Future Without Forgiveness* (New York, NY: Random House, 2000), 44.; Alex Boraine, *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission* (New York, NY: Oxford University Press, 2000), 12-13.

Moreover, there was widespread public skepticism about the feasibility of such commission.²² It took additional two years to design and provide unique content to this initiative.

Boraine's Conferences

The South African TRC began taking shape in 1993 and was officially proclaimed in the 1995 Promotion of National Unity and Reconciliation Act.²³ In between, there was a long process of deliberation and preparation addressing the specific design of the truth-seeking process in the South African context. Since it was already agreed upon that the truth-seeking process would not lead to criminal prosecutions or to any other form of retribution the deliberation mostly focused on defining alternative goals for the truth-seeking process. Three sources of influence shaped these goals and the unique features of the South African TRC. The first influence was the growing international scholarly interest in the issue of transition. At this point, many scholars focused on evaluating the experience of the Latin American and Eastern European transitions and there was an eagerness to offer their lessons to the South Africans.²⁴

The second source of influence was ideational and domestic, specifically, two earlier civil society initiatives. First is the 1985 *Kairos Document*, which was a statement, issued by a group of South African religious leaders criticizing the churches' position on

²² At this point the majority of South Africans still preferred the trial option. Lyn S. Graybill, *Truth and Reconciliation in South Africa: Miracle or Model?* (Boulder, CO: Lynne Rienner Publishers, 2002), 58. See also, Andre du Toit and Wilmot James in Alex Boraine, Levy Janet, and Scheffer Ronel, eds., *Dealing with the Past: Truth and Reconciliation in South Africa* (Cape Town, South Africa Institute for Democracy in South Africa, 1994), 132 and 135 respectively.

²³ The TRC began operating officially on December 1995. The victims and institutional/thematic hearings ended by mid-1998. The amnesty committee continued its hearings until May 2001. The first five volumes of the report were handed to President Mandela in October 1998 and the commission officially closed on November 2001. Additional volumes were completed in April 2002.

²⁴ The project *Justice in Times of Transitions*, which is described in the previous chapter, was especially focused on assisting the commission. It sponsored the first preparatory conference in South Africa and assisted with background materials and contacts.

apartheid. One of the document's main themes was the link between reconciliation, social change, and the building of a national community.²⁵ Significantly, several of the signatories of the Kairos Document, including Charles Villa-Vicencio, Frank Chikane, and Bongani Finca, were actively involved in the process of design and legislation of the truth commission and later in its operation.²⁶ A second initiative was the *National Peace Accord* (September 14 1991). In response to the violence accompanying the negotiations, South African National Human Rights Movement and the South African Council of Churches initiated a call for the elimination of political violence, promotion of democratizations, and community reconstruction. The Accord was signed by the political leaders of major political parties and labor organizations. Significantly, it led to the establishment of a network of "trust and reconciliation" peace committees at the local, regional, and national levels.²⁷ Both the Kairos Document and the National Peace Accord emphasized the concepts of reconciliation and nation/community-building; thereby, creating a mind-set that later facilitated the link between the truth-seeking process and both these concepts.

The third source of influence on the design and goals of the TRC were the two 1994 conferences sponsored by the Institute for the Study of Democratic Alternatives (IDASA) and organized by Alex Boriane, who became the person most closely

²⁵ Bronwyn Anne Leebaw, "Judging the Past: Truth, Justice and Reconciliation from Nuremberg to South Africa" (PhD Dissertation, University of California, Berkeley, 2002), 194-213.. According to Leebow another factor played a role in shaping the approach of the ANC and consequently the of the TRC's goals; namely, the ANC's experience with informal justice in the "people courts." These courts were practiced as a form of political opposition to the apartheid regime.

²⁶ Charles Villa-Vicencio became the Research Director of the TRC; Frank Chikane was an ANC member and was involved in the legislation of the commission; Bingani Finca became a Commissioner in the TRC.

²⁷ Peter Gastrow, *Bargaining for Peace: South Africa and the National Peace Accord* (Washington DC.: United States Institute of Peace Press, 1995).

associated with the creation and operation of the TRC.²⁸ These conferences deserve particular attention as they brought together the international and domestic influences and their role in the design of the TRC “cannot be overestimated.”²⁹

The first conference – titled *Dealing with the Past* (February, 1994) – focused on the transitions in Latin America and Eastern Europe, specifically, evaluating the relevance and implication of these experiences for South Africa. The consensus that emerged among South Africans was that while informative, the Latin American truth commissions were largely “examples of failure rather than successes,”³⁰ primarily since they failed to establish the finality of demands for justice and truth. Accordingly, South Africa needed a new approach for its own truth commission.³¹ This new approach was best presented in the conference by Jose Zalaquett, a former member of the Chilean Truth and Reconciliation Commission. Zalaquett argued that moral reconstruction and reconciliation, rather than justice, ought to be the prime goal of dealing with the past in times of transition, and that truth commissions serve these goals best.³² While not all

²⁸ Following years of opposition to apartheid, the civil society in South Africa was well-organized and active. Many NGOs were initially involved in the process of negotiating the post-apartheid policies. Yet, the process of designing the TRC became gradually very centralized. It was led by Alex Boraine, and some argue that many local NGOs were marginalized and excluded from the consultative process. Dorothy Shea, *The South African Truth Commission: The Politics of Reconciliation* (Washington DC: United States Institute of Peace, 2000), 11, fn. 19.

²⁹ Alex Boraine, *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission* (New York, NY: Oxford University Press, 2000), 17. These conferences originated from earlier encounters between Boraine and the participants and organizers of the Justice in Times of Transition project. Already in 1992, even before the official decision for a truth commission, Boraine was part of a group of South Africans who visited several countries in Eastern Europe, including Germany, the former Czechoslovakia, and Hungary to learn about their transition experience.

³⁰ Graeme Simpson, the Executive Director of the Centre for the Study of Violence and Reconciliation, in a June 1994 memo to the Minister of Justice, cited in Dorothy Shea, *The South African Truth Commission: The Politics of Reconciliation* (Washington DC: United States Institute of Peace, 2000), 10, fn. 17.

³¹ Alex Boraine, “Introduction,” in *Dealing with the Past: Truth and Reconciliation in South Africa*, ed. Alex Boraine, Janet Levy, and Ronel Scheffer (Cape Town, South Africa: Institute for Democracy in South Africa, 1994), x.

³² Jose Zalaquett in Alex Boraine, Levy Janet, and Scheffer Ronel, eds., *Dealing with the Past: Truth and Reconciliation in South Africa* (Cape Town, South Africa: Institute for Democracy in South Africa, 1994), 9 & 11.

participants agreed with Zalaquett, his ideas became the main theme of the conference. The discussions focused largely on the nexus between truth and reconciliation, and truth and nation-(re)building.³³

One of the immediate outcomes of the first conference was that Alex Boraine, drafted a short proposal and sent it to Nelson Mandela.³⁴ In this proposal, Boraine, urged naming the commission the Truth and Reconciliation Commission, and proposed setting reconciliation and unity as its primary goals. Few days later, in April 1994, the ANC won South Africa's first elections. Mandela passed on Boraine's proposal to the newly elected Minister of Justice, Dullah Omar. Following a working-meeting of Boraine and Omar, on May 27, 1994 the TRC decision was announced in parliament, and in this enouncement the main emphasis was the goal of reconciliation.

The second conference - titled *Truth and Reconciliation* (July, 1994) – aimed to unpack the nexus between truth and reconciliation and consider the practical implications of this nexus when designing the TRC. The conference brought together almost 150 South African delegates from all walks of life, including representatives of human rights organizations and political parties.³⁵

Aryeh Neier, who opened the conference with the discussion of “why dealing with the past” mentioned three main goals: the acknowledgment of victims' worth and dignity and avoiding the perpetuation of their victimization; establishment of the rule of law; deterrence of future abuses. These goals are framed rather narrowly in light of the eventual goals of the TRC. They represent the framing of the truth-seeking process in the 1980s, see Aryeh Neier Alex Boraine, Levy Janet, and Scheffer Ronel, eds., *Dealing with the Past: Truth and Reconciliation in South Africa* (Cape Town, South Africa Institute for Democracy in South Africa, 1994), 3.

³³ For example see the Conference's comments by Albie Sachs and John de Gruchy, in Alex Boraine, Levy Janet, and Scheffer Ronel, eds., *Dealing with the Past: Truth and Reconciliation in South Africa* (Cape Town, South Africa Institute for Democracy in South Africa, 1994), 129 and 149 respectively.

³⁴ Alex Boraine, *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission* (New York, NY: Oxford University Press, 2000), 30-38.

³⁵ Leaders and members of the opposition parties were also invited to the conference. However, their parties objected to the proposal for a truth commission and refused to participate. Consequently, one of the main themes of the conference was to prepare for the forthcoming debate in Parliament by way of evaluating anticipated opposition to the commission and suggesting strategies of persuasion, see Wille

One of the conference's main themes was the emphasis on individual and national healing, as well as on forgiveness and social catharsis and the ways in which the truth-seeking process may advance these goals. The focus on healing was by no means accidental and reflects careful thinking of the organizers. According to Minister of Justice Dullah Omar, it was important to clarify that the TRC is neither a witch-hunt nor a new Nuremberg-style trial.³⁶ Rather, the conceptual framework of reconciliation and healing allowed for the accounting of victims' needs also presenting the truth-seeking process as distinct as possible from retribution in order to gain opposition support.³⁷

The mind-set of the second conference is summarized well by Justice Albie Sachs, "in discussing the notion of a Truth and Reconciliation Commission we seem to be envisioning an enterprise that is primarily moral, cultural, psychological, and humane rather than one which is solely legal or instrumental."³⁸ Indeed, the main significance of the conferences organized by Boraine was that they set the TRC apart from the legal option of criminal prosecution, mostly by considering goals different from those presumably achieved by the legal option. This has helped to establish the idea that truth-seeking commissions are not merely compromise or second-best option but rather are processes with its own distinct merits. This thinking guided the design and operation of the TRC and has been reflected in its unique features.

Esterhuyse and Wilmot James in Alex Boraine and Janet Levy, eds., *The Healing of a Nation?* (Cape Town, South Africa: Justice in Transition, 1995), 30-32 and 83-86 respectively.

³⁶ Dullah Omar, in *Ibid.*, 2.; Alex Boraine in Alex Boraine and Janet Levy, eds., *The Healing of a Nation?* (Cape Town, South Africa: Justice in Transition, 1995), xviii and 140.

³⁷ The dual goal of addressing the needs of victims and reassuring opposition also guided the public campaign for the truth commission. The campaign included more than 30 educational seminars, many publications, and a special radio broadcasting outlining the objectives of the commission, Alex Boraine, "Introduction," in *The Healing of a Nation?*, ed. Alex Boraine and Janet Levy (Cape Town, South Africa: Justice in Transition, 1995), xxiii.

³⁸ Albie Sachs, in *Ibid.*, 103.

The Unique Features of the South African TRC

It is hard to find a place where so much thoughtfulness and creativity has gone into this grave matter of public policy as in South Africa.³⁹

Compared with earlier truth commissions, the South African TRC had unparalleled resources at its disposal. However, this is not where its uniqueness ends. Significantly, it introduced two types of novel characteristics. The first type is institutional, including, quasi-legal powers, scope of mandate, transparency and publicity. The second type of unique features is those of content, which focus on the goals of the TRC, specifically the goals of reconciliation and healing.⁴⁰

Quasi-Legal Powers

The South African TRC was the first commission to have search-and-seizure powers as well as the right to issue court-backed subpoenas. These legal powers along with a permanent Investigation Unit boosted the investigatory capability of the TRC and assured more access to information, including secured files and witnesses. The conditional and criteria-driven amnesty was another significant legal power of the TRC. As was noted earlier, the decision for amnesty was agreed in the negotiations and was legislated into the 1993 constitution. However, unlike earlier “blanket amnesties,” the amnesty in South Africa was to become part of the TRC proceedings and powers. Accordingly, the commission had the power of denying amnesty and threatening prosecution. The amnesty was conditioned upon individual appearance in front of the

³⁹ Juan E Mendez, “Accountability for Past Abuses,” *Human Rights Quarterly* 19, no. 2 (1997).

⁴⁰ In practice, the institutional unique features and those of content were intertwined. Alex Boraine notes, for example, that the public hearings and the overall accessibility of the commission provide a “strong educative opportunity so that healing and reconciliation is not confined to a small group but is available to all.” Quoted in Michael P Scharf, “The Case for a Permanent International Truth Commission,” *Duke Journal of Comparative & International Law* 7, no. 2 (1997): 387, fn. 363.

TRC Amnesty Committee and full disclosure of all knowledge pertaining to each act of human rights violations. To this effect, the conditional amnesty closely resembled a “plea bargain” and boosted the power of the TRC.⁴¹ Moreover, the disclosure of information had to include a personal statement about the political objectives of violence.⁴² This demand for full disclosure of political intent was essentially a demand for acknowledgment, which is rarely seen even in courtrooms.

Scope of Mandate

The TRC mandate covers four decades of human rights violation under apartheid (1960-1994).⁴³ Yet, the main significance of the mandate’s scope is not so much the broad timeframe but the fact that the South African TRC was charged with examining the conditions and context that sustained the Apartheid regime. For that purpose, the TRC mandate included hearings that addressed the broad responsibility of social institutions for passively or actively contributing to the climate in which individual act of human rights violations took place.⁴⁴

The special institutional hearings focused on the role of many sectors, including political parties, private business, labor organizations, the health sector, the media, the judiciary, religious organizations and faith communities. There were also several special thematic and issue-specific hearings dealing with youth, gender and prisons under

⁴¹ Neil J Kritz, "Where We are and How We Got Here: An Overview of Development in the Search for Justice and Reconciliation," in *The Legacy of Abuse: Confronting the Past, Facing the Future*, ed. Alice A Henkin (Washington DC: The Aspen Institute, 2003), 34.

⁴² By November 1, 2000, the TRC’S amnesty committee assessed 7112 amnesty applications, of which 840 were granted and 5392 were refused, Brandon Hamber, "Ere their story die: truth, justice and reconciliation in South Africa," *Race & Class* 44, no. 1 (2002).

⁴³ The dates cover the period starting with the Sharpeville Massacre (21 March 1960 – where the police used armored vehicles and fired into the crowd of protestors, killing, according to official figures 69 and injuring 180) and the consequent declaration of armed struggle by the ANC (16 December 1961) and ends with the inauguration date of President Nelson Mandela (10 May 1994).

⁴⁴ Alex Boraine, *A Country Unmasked: Inside South Africa’s Truth and Reconciliation Commission* (New York, NY: Oxford University Press, 2000), 187.

apartheid and with specific important events such as the Soweto uprising in 1976.⁴⁵ The key significance of these hearings is that they aim to provide a broader contextual understanding of apartheid. In addition, they place the work of the TRC in a position to prescribe and recommend broader institutional and structural reforms. The commission is, therefore, a mechanism not only for either retributive justice or reflection on past injustices, but primarily a tool for social change.

Transparency and Publicity

According to many “the TRC main procedural breakthrough was its transparency.”⁴⁶ Indeed, transparency and wide public participation were key aspects of the TRC both prior and during its operation and were largely part of a vast mobilization campaign. This campaign included radio and newspaper advertisements that encouraged as many as possible to “come forward and tell their story.” For example, before the discussion in Parliament on the TRC Bill, the Justice in Transition project distributed 150,000 booklets in six languages summarizing the main ideas of the commission in order to garner support.⁴⁷ Beyond mobilization, democratization was another important goal linked to transparency. Accordingly, the full involvement of civil society at all stages of the process democratizes the whole process of truth seeking and adds to its moral justification.⁴⁸

⁴⁵ These hearings for the most part focused on broad patterns of historical injustice. For example, the hearing on the mining industry focused on how this industry disrupted the family structure by creating a migrant labor system, which accounted for social ills such as alcoholism and prostitution. Ibid., 145-187.

⁴⁶ Robert I Rotberg, “Transitional Justice by Ruti Teitel: Book Review,” *American Political Science Review* 95, no. 3 (2001): 727.

⁴⁷ Alex Boraine, *A Country Unmasked: Inside South Africa’s Truth and Reconciliation Commission* (New York, NY: Oxford University Press, 2000), 50-67. See also, Lyn S. Graybill, *Truth and Reconciliation in South Africa: Miracle or Model?* (Boulder, CO: Lynne Rienner Publishers, 2002).

⁴⁸ Richard J Goldstone, “interview by the author, tape recording,” (Harvard University, Cambridge, MA).

The TRC was the first commission created through a parliamentary legislative process, as opposed to earlier commissions created through presidential decree or executive order. The legislative process was open for public deliberation and gave many ordinary citizens and representatives of civil society the opportunity to participate and express their voice in the formation of the commission.⁴⁹ This is also true, for example, about the open process of selecting commissioners, in which President Mandela invited nominations from the public.

According to Alex Boraine, “a major commitment of the Truth and Reconciliation Commission is truth seeking and truth telling, and not merely finding out the truth, but making it available.”⁵⁰ During commission’s operation, this commitment was reflected in the decision to open the committees’ hearings to the general public and the media. The first hearings of the Human Rights Violations Committee in East London were attended by more than two thousand people and overall, this committee – “the public face of the commission” – held 76 open hearings across the country, in 1995-1997.⁵¹ The commitment to making the truth publicly available was also solidified in commission’s report, which recommended making the documentation available for human rights education.⁵²

Compared with earlier commissions, which operation was mostly private until the publication of the final report, if it was published at all, the media exposure of the TRC

⁴⁹ Alex Boraine, “Alternative and Adjunct to Criminal Prosecution, excerpts from a speech in Brussels, Belgium, July 20-21, 1996,” in *When Sorry Isn’t Enough* ed. Roy L Brooks (New York, NY: New York University Press, 1999), 470.

⁵⁰ Alex Boraine speaking in conference “Beyond Racism: Brazil, South Africa, and the United States in the 21st Century (April 1997, Atlanta) cited in Alex Boraine, “Truth and Consequences; Ford Foundation Report,” (New York, NY: Ford Foundation 1998).

⁵¹ Desmond Mpilo Tutu, *No Future Without Forgiveness* (New York, NY: Random House, 2000), 120.

⁵² Past Truth Commissions Recommendation: A Selected List in Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, NY: Routledge, 2001). Appendix 1; Chart 5

was remarkable. The printed and electronic media published daily summaries of the hearings. Out of the 21,298 statements collected from victims, their kin, friends and witnesses, about 1800 were broadcasted nationally.⁵³ The TRC had an official newsletter (*Truth Talk*) published in several indigenous languages, and even though the Internet was at its infancy the TRC-run website (www.truth.org.za) continuously presented updates, background documents, and transcripts of testimonies and amnesty decisions. The TRC Special Report, a news program that reported its activities, had a 1.1 to 1.3 million viewers each week in the first year of the commission's operation and was among the top ten television programs in the country.⁵⁴

The Amnesty Committee's public hearings, which were the setting for dramatic confrontation between victims and perpetrators, attracted a great deal of public attention.⁵⁵ These hearings, in which there were public expressions of contrition and forgiveness, gave the commission the nickname the "Kleenex Commission" for all the crying that took place.⁵⁶ This performative-ceremonial aspect captured the imagination of many around the world, and solidified the perception that the South African TRC could deliver a real change for South Africa.⁵⁷

⁵³ Antjie Krog, *Country of my Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa* (Johannesburg, South Africa: Random House, 1998), 237.

⁵⁴ Brandon Hamber, "Ere their story die: truth, justice and reconciliation in South Africa," *Race & Class* 44, no. 1 (2002): 64.

⁵⁵ Twenty percent of the Amnesty Committee hearings were open to the public and were covered by the media.

⁵⁶ Desmond Mpilo Tutu, *No Future Without Forgiveness* (New York, NY: Random House, 2000), 163.

⁵⁷ Marietjie M Allan, "The South Africa truth and reconciliation commission as a therapeutic tool," *Behavioral Sciences & the Law* 18, no. 4 (2000). In 2000, a documentary movie – *Long Night's Journey into Day* – chronicled the work of the South African TRC. The movie won numerous film and human rights awards and helped convey to international audience the human drama of the Commission's work.

Reconciliation

What we are hoping for when we embrace the notion of reconciliation is that we restore the humanity to those who were perpetrators. We do not want to return evil by another evil [...] We do not want to see people suffer in the same way that we did suffer [...] We do not want to return the suffering that was imposed upon us [...] We would like to see peace in this country. Ms. Cynthia Ngewu, a mother of Apartheid murder victim⁵⁸

The TRC was innovative not only in its institutional procedures but also in terms of the goals associated with the truth-seeking process. Of these, reconciliation was undoubtedly the most important one. While the TRC was not the first commission to include reconciliation in its title and mission statement, it was the first to focus on reconciliation in its operation. Notably, the meaning or expectation of reconciliation was never properly defined by the commission; nevertheless, it was a defining feature of the TRC. Reconciliation was used extensively in the campaign promoting the commission. At the first public hearing of the TRC, for example, a huge banner hung from the wall read: "*Truth: The Road to Reconciliation.*"⁵⁹

The TRC stressed interpersonal reconciliation.⁶⁰ That is, not merely instrumental coexistence within a polity but rather emphasis on the idea of victims forgiving perpetrators: *lizalise idniga lakho – the forgiveness of sins makes a person whole.*⁶¹ This

⁵⁸ *South Africa Truth and Reconciliation Commission Report*, (South African Government Information, 2003 accessed July 15 2008); available from <http://www.info.gov.za/otherdocs/2003/trc/>. Vol. 5, Chapter 9, Paragraph 33

⁵⁹ Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, NY: Routledge, 2001), 156.

⁶⁰ Tristan Anne Borer, "Reconciling South Africa or South Africans? Cautionary Notes from the TRC," *African Studies Quarterly* 8, no. 1 (2004). This interpretation of interpersonal reconciliation refers to the narrative of the commission. Some critics argue that in practice the commission facilitated no interpersonal or community-level reconciliation. Instead, it constituted a top-down approach of setting national reconciliation as a goal and assuming that interpersonal reconciliation at the local level would be a byproduct. Hugo Van der Merwe, "National and Community Reconciliation: Competing Agendas in the South African Truth and Reconciliation Commission," in *Burying the Past: Making Peace and Doing Justice After Civil Conflict*, ed. Nigel Biggar (Washington DC.: Georgetown University Press, 2003).

⁶¹ Commissioner Bongani Finca opened the first public hearing of the TRC with this Xhosa hymn.

notion of reconciliation as forgiveness was grounded in religious imagery and narrative.⁶² As noted by several observers, the hearings, which commenced each day with a prayer and the national anthem, “felt like a congregation.”⁶³ Particularly as Chairperson Tutu “with his purple cassock and wearing his crucifix [was] calling for confession, redemption, and forgiveness.”⁶⁴

All the same, forgiveness was only one aspect of reconciliation as it was conceived in the TRC. The second important aspect was the concept of *Ubuntu* (humaness) introduced by Archbishop Tutu: “you can only be human in a humane society. If you live with hatred and revenge in your heart, you dehumanize not only yourself, but your community.”⁶⁵ This interpretation of reconciliation was different from the Western Christian concept of forgiving one's sins; instead, it is an ideal of community and unity, which embodies reciprocity. To be humane means to abandon any notions of hatred and revenge and endorse reciprocal forgiveness. The truth-seeking process, which mutually acknowledges both victims and perpetrators, it was argued, does precisely that.⁶⁶ In this interpretation of reconciliation, the process of truth-telling was highlighted

⁶² Claire Moon, *Narrating Political Reconciliation: South Africa's Truth and Reconciliation Commission* (Lanham, MD: Lexington Books, 2008).

⁶³ Belinda Bozzoli, “Public Ritual and Private Transformation: The Truth Commission in Alexandra Township, South Africa, 1996,” *African Studies* 57, no. 2 (1998): 170.

⁶⁴ Tristan Anne Borer, “Reconciling South Africa or South Africans? Cautionary Notes from the TRC,” *African Studies Quarterly* 8, no. 1 (2004).

⁶⁵ Archbishop Desmond Tutu quoted in Antjie Krog, *Country of my Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa* (Johannesburg, South Africa: Random House, 1998), 143. The concept of *ubuntu* was mentioned already in the interim constitution and remained central in all official TRC documents, see Michael Battle, *Reconciliation: The Ubuntu Theology of Desmond Tutu* (Cleveland, OH: Pilgrim Press, 1997).

⁶⁶ Antjie Krog, *Country of my Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa* (Johannesburg, South Africa: Random House, 1998), 143.; Michael Battle, *Reconciliation: The Ubuntu Theology of Desmond Tutu* (Cleveland, OH: Pilgrim Press, 1997).; Michael Battle, “Truth and Reconciliation: From Chile to South Africa,” in *Reconciliation, Nations and Churches in Latin America* ed. Ian S Maclean (Burlington, VT: Ashgate, 2006).

as a process that corresponds with African oral history tradition and tied to African spirituality and context.⁶⁷

The Healing Power of Truth-Telling

We are meant to be part of the process of the healing of our nation, of our people, all of us, since every South African has to some extent or other been traumatized. We are a wounded people We all stand in need of healing. Desmond Tutu⁶⁸

How do you move beyond where we have been for so long? We have to acknowledge – to put it another way – that we are dangerously sick. The healing that is so desirable and sought after and necessary can never be achieved by looking away, by some form of amnesia, by the mounting platitudes, of romanticism. We need radical surgery in my country because we are close to being sick to death. And that truth is, I think, the beginning of healing. Alex Boraine⁶⁹

While the goal of healing was not stated officially in the National Reconciliation Act, the idea of *Revealing is Healing* was central to the operation of the TRC.⁷⁰ The narrative of healing was used extensively to describe the commission's work and the final report explicitly recognized the healing potential of truth-telling and its potential cathartic effect for victims and society at large.⁷¹ One can distinguish between two levels in which healing were supposedly taking place: for individual victims and for society as a whole.

At the individual level the narrative of healing closely represented the victim-centric approach, where "victims and not perpetrators should be the beginning, the focus

⁶⁷ Fiona C Ross, "On Having voice and Being Heard: some after-effects of testifying before the South African Truth and Reconciliation Commission," *Anthropological Theory* 3, no. 3 (2003): 328.

⁶⁸ Opening address to the South African Truth and Reconciliation Commission, December 16, 1995.

⁶⁹ Alex Boraine, "Truth and Consequences; Ford Foundation Report," (New York, NY: Ford Foundation 1998).

⁷⁰ *Revealing is Healing* was a common banner displayed during the TRC hearings.

⁷¹ Fiona C Ross, "On Having voice and Being Heard: some after-effects of testifying before the South African Truth and Reconciliation Commission," *Anthropological Theory* 3, no. 3 (2003).

and the central point.”⁷² This narrative was infused with medical and therapeutic metaphors that expressed the notion that telling the truth – “of vocalizing one’s pain” – is a prerequisite for “the healing of one’s memories.”⁷³ For example:

An abscess cannot heal properly unless it is thoroughly incised and cleaned out. But the process of incision and cleansing is not without pain, even with modern anesthesia. Pain is thus as integral component of the cleansing process which precedes healing.⁷⁴

In practice, the concern for healing was reflected in the specific procedures of the Human Rights Violations Committee. During the victims’ hearings, each victim was often accompanied with family members for support and was assigned with “professional comforters” such as a psychotherapist or social worker, whose sole goal was to look after the witnesses by offering human contact, tissue, and water.⁷⁵

At the societal level, the focus on healing rested on the assumption that group, or social, psychology is similar to individual psychology. As put by Neil Kritz, “what is true of individuals emerging from massive abuse and trauma is no less true of nations: mechanisms are needed to confront and reckon with that past, facilitating closure.”⁷⁶ Accordingly, it is not only individuals but the nation as a whole that has been victimized during the apartheid years and needs healing: “our nation needs healing. Victims and survivors who bore the brunt of the apartheid system need healing. Perpetrators are, in

⁷² Antjie Krog, *Country of my Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa* (Johannesburg, South Africa: Random House, 1998), 9.

⁷³ Judith Lewis-Herman, *Trauma and Recovery* (New York, NY: Basic Books, 1994).; Russell Daye, *Political Forgiveness: Lessons from South Africa* (Maryknoll, NY: Orbis Books 2004).

⁷⁴ Mamphela Ramphele in Alex Boraine and Janet Levy, eds., *The Healing of a Nation?* (Cape Town, South Africa: Justice in Transition, 1995), 34.

⁷⁵ Susan VanZanten Gallagher, “Cry with a Beloved Country: Restoring Dignity to the Victims of Apartheid,” *Christianity Today* 42, no. 2 (1998): 1. See also, Teresa Godwin Phelps, *Shattered Voices: Language, Violence and the Work of Truth Commissions* (Philadelphia, PA: University of Pennsylvania Press, 2004), 109.; Jillian Edelstein, *Truth & Lies: Stories from the Truth and Reconciliation Commission in South Africa* (London, UK: Granta Books, 2001).

⁷⁶ Neil Kritz quoted in David Mendeloff, “Truth-Seeking, Truth-Telling and Postconflict Peacebuilding: Curb the Enthusiasm?,” *International Studies Review* 6, no. 3 (2004): 364.

their own way, victims of the apartheid system and they too need healing.”⁷⁷ The discourse of healing at the national level was also infused with similar medical metaphors. While there was no real explication of what healing a nation really means, there was strong emphasis on the therapeutic effect of truth-telling: “if truth is the first casualty of violent political conflict, truth commissions are the field hospital.”⁷⁸

*A Success While in the Making*⁷⁹

South Africa’s peaceful transition to democracy, culminating in the Truth and Reconciliation Process, is spoken of in almost reverent tones, as *a phenomenon that is unique in the annals of history, one to be commended as a new way of living for humankind*.⁸⁰

What we have tried to in South Africa has attracted the attention of the world. This tired, disillusioned, cynical world, hurting so frequently and so grievously, has marveled at the process that olds out considerable hope in the midst of much that negates hope *A beacon of hope, a possible paradigm for dealing with salutations where violence, conflict, turmoil and sectional strife have seemed endemic*.⁸¹

The final unique feature of the South African TRC has less to do with its procedural design and goals and more to do with its unique legacy. The South African TRC was envisioned to be “enormously successful” even before its operation was

⁷⁷ Desmond Mpilo Tutu, "Forward," in *To Remember and to Heal: Theological and Psychological Reflections Truth and Reconciliation*, ed. Russell H Botman and Robin M Petersen (Cape Town, South Africa: Human and Rousseau, 1996).

⁷⁸ Michael Humphrey, *The Politics of Atrocity and Reconciliation: From Terror to Trauma* (New York, NY: Routledge, 2002), 108.

⁷⁹ I do not attempt here to assess the actual success of the South African TRC. My argument focuses on the widely perceived success of the TRC.

⁸⁰ Archbishop Desmond Tutu, Forward to *South Africa Truth and Reconciliation Commission Report*, (South African Government Information, 2003 accessed July 15 2008); available from <http://www.info.gov.za/otherdocs/2003/trc/>. Italic added.

⁸¹ Desmond Mpilo Tutu, *No Future Without Forgiveness* (New York, NY: Random House, 2000), 281. Italic added.

completed or its effects even evaluated.⁸² According to Alex Boraine, the reason for the perceived success of the TRC was that “while everyone predicted bloodshed, there was no bloodshed [and for] many it was the TRC that accounted for South Africa’s peaceful transition.”⁸³

A second explanation for the widespread perception of success was the mobilization rhetoric used by TRC officials, notably by Archbishop Tutu.⁸⁴ The South African TRC required vast national mobilization. In order to be considered legitimate it had to encourage the wide participation of perpetrators as well as victims. One key strategy for establishing the commission’s legitimacy and achieving participation has been the repeated articulation and public statement of the anticipated positive merits of the truth-seeking process. Accordingly, the notion – “only a complete and truthful disclosure of past human rights abuses can guarantee lasting reconciliation” – was repeated as a truism.⁸⁵ The rhetoric of positive expectations and success was soon picked up by international observers and repeated worldwide as a matter of fact.⁸⁶

In sum, the unique features of the TRC, including its legacy of success, were not fortuitous and reflect the careful thinking of the TRC designers. Combined together, these

⁸² Justice Richard Goldstone in an interview with Dorothy Shea in November 1998 cited Dorothy Shea, *The South African Truth Commission: The Politics of Reconciliation* (Washington DC: United States Institute of Peace, 2000), 77, fn.71.

⁸³ Alex Boraine, “interview by the author, tape recording,” (International Center for Transitional Justice, New York, NY). According to Kenneth Christie, one of the recurring themes in numerous interviews he conducted was that it was a common perception that South Africa would have been lunged into a violent civil war, Kenneth Christie, *The South African Truth Commission* (London, UK: Macmillan, 2000), 69.

⁸⁴ Robert Rotberg, “interview by the author, tape recording,” (Harvard University, Cambridge, MA).

⁸⁵ As appeared in an editorial in a liberal South African newspaper mostly circulated among blacks, quoted in Tristan Anne Borer, “Reconciling South Africa or South Africans? Cautionary Notes from the TRC,” *African Studies Quarterly* 8, no. 1 (2004): 22. fn. 18.

⁸⁶ Leading newspapers like the London Times (31 October 1998) and the New York Times (1 November 1998), for example, run praising editorial with the publication of the TRC report. In these editorials they specifically state the reconciliation and healing achievements of the TRC, cited in Alex Boraine, *A Country Unmasked: Inside South Africa’s Truth and Reconciliation Commission* (New York, NY: Oxford University Press, 2000), 341.

unique features aimed to overcome the political challenges presented by the transition.⁸⁷ All the same, the process that shaped the TRC does not reflect mere political opportunism. On the contrary, this process brought together a group of individuals that were already committed to the TRC's ideas and goals, and were invaluable in articulating and exporting these ideas. The remainder of this chapter discusses the characteristics of this group.

The Emergence of the Truth-Seeking Epistemic Community

By the mid-1990s there was already ample scholarly interest in democratic transitions; specifically over the question of accountability for past human rights violations during and following the transition. Setting aside the broader interest in transitional justice, my focus here is on the distinct group that emerged and aligned along the shared conviction in the truth-seeking principle. In what follows, I identify the patterns of membership and activity of this emerging truth-seeking epistemic community as well as the principle causal beliefs and motivations shared by its members.

Membership and Pattern of Activity

The South African TRC owes much of its unique features and perceived success to two specific individuals: Archbishop Desmond Tutu and Alex Boraine.⁸⁸ While Archbishop Tutu was more the public and symbolic face of the commission, Boraine was the driving force behind it. Boraine, who was a former Minister and the President of the South African Methodist Church, co-founded in 1986 the Institute for Democratic

⁸⁷ Alex Boraine, "interview by the author, tape recording," (International Center for Transitional Justice, New York, NY).

⁸⁸ Robert Rotberg, "interview by the author, tape recording," (Harvard University, Cambridge, MA).

Alternative in South Africa. Under the auspices of the Institute he organized the commission's preparatory conferences (*Dealing with the Past*, February 1994; *Truth and Reconciliation*, July 1995). In 1994, he left his position at the Institute and worked full-time preparing for the TRC. In December 1995 he was appointed the Deputy Chair of the TRC by President Mandela.

These conferences were the forum in which the epistemic community emerged. They brought together human rights activists, truth-commissions' experts, academics, and local representatives and provided the space for the exchange of ideas, knowledge, and expertise. In South Africa, this exchange connected like-minded individuals that supported the truth-commission option and principally the reconciliation rationale for it. For the long run, the South African preparatory conferences also set the tone for the community's future pattern of activity.⁸⁹ Namely, the "*industry*" – as termed by Justice Goldstein⁹⁰ – of numerous conferences and workshops focusing on the normative and practical implications of transition to democracy. They represent a pattern of close cooperation between professional, truth-commissions' experts, and local representatives. Like the ones in South Africa, many of these subsequent conferences yielded reports and edited volumes that outlined and supported the general rationale for truth-seeking commissions, and that gradually have become the truth-seeking commissions' body of knowledge.

While conferences account for the formal setting of the community's activity, there have been also numerous informal channels of communication, including long-

⁸⁹ The South African conferences were by no means the first and only to focus on the legacies of atrocities during transition. However, the South African Conferences, particularly the second one, had the specific agenda of focusing on the truth-seeking principle.

⁹⁰ Richard J Goldstone, "interview by the author, tape recording," (Harvard University, Cambridge, MA).

lasting personal friendships and influences. Boraine notes, for example, the significance of his friendship with Aryeh Neier, the President of the Open Society Institute and the former Executive Director of Human Rights Watch. Neier introduced Boraine to journalists Lawrence Weschler and Tina Rosenberg. Both Weschler and Rosenberg wrote important books about earlier transitions (Weschler on Brazil and Uruguay and Rosenberg on Eastern Europe) in which they criticized the punitive (trials or lustrations) option.⁹¹ According to Boraine, their books and their participation in the first preparatory conference had a significant effect on how he thought about the goals of the TRC.

Who were other members of this emerging community? A person whose influence on the shaping of the TRC was repeatedly mentioned is Jose (Pepe) Zalaquett. Zalaquett is a Law Professor and Chilean activist who served on the Chilean National Commission for Truth and Reconciliation. Already during his work in Chile, Zalaquett argued that in times of transition the truth-seeking is more important than retributive justice by linking truth-seeking and reconciliation. In the consultative process that preceded the South African TRC, Boraine gave Zalaquett center stage. In her book, *Country of my Skull*, journalist Antjie Krog, who covered the South African TRC, writes about how she came to support the truth-seeking process:

It takes the Chilean philosopher and activist Jose Zalaquett, who served on the Chilean Truth Commission, precisely seven and a half minutes to convert me to the idea. The Nuremburg and Tokyo trials could only work the way they did because the guilty lost political power and their guns. It will sometimes be necessary to choose between truth and justice. We should choose truth.⁹²

⁹¹ Lawrence Weschler, *A Miracle, a Universe: Settling Accounts with Torturers* (New York, NY: Pantheon Books, 1990).; Tina Rosenberg, *The Haunted Land: Facing Europe's Ghosts after Communism* (New York, NY: Random House, 1995).

⁹² Antjie Krog, *Country of my Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa* (Johannesburg, South Africa: Random House, 1998), 23.

In terms TRC's design, Zalaquett introduced what became several key features of the TRC, including the idea of conditional amnesty, granting subpoena powers to the commission, and the need to achieve broader "contextual reference" which in practice had shaped the special institutional and thematic hearings.⁹³

Several other members should also be named, including Charles Villa-Vicencio, who was a Methodist Minister and a theology professor at the University of Cape Town. He was involved with the Kairos Document and a vocal advocate of reconciliation. He was invited by Boraine to participate in the TRC preparatory process, and later was appointed as the Commission's National Research Director. Other member is Justice Richard J. Goldstone, who following his work in the Goldstone commission, participated in the process leading to the TRC. In light of his legal background including his contribution to the Nuremberg tribunal, Goldstone's endorsement of the truth-seeking principle was particularly important. Paul van Zyl is another notable member. As a young lawyer, van Zyl worked as a researcher for the Goldstone Commission and later joined Boraine in the IDASA conferences. Following Boraine's recommendation he was appointed the executive secretary of the TRC. Finally, the membership could not be complete without Priscilla Hayner, who was previously an intern with the Commission on the Truth for El Salvador (Comision de la Verdad para El Salvador). Hayner's "path-breaking" study on truth commissions⁹⁴ as well as her definition of truth commission are the most cited in the transitional justice literature.⁹⁵ After her seminal article was

⁹³ Jose Zalaquett in Alex Boraine and Janet Levy, eds., *The Healing of a Nation?* (Cape Town, South Africa: Justice in Transition, 1995), 51.

⁹⁴ Lyn Graybill and Kimberly Lanegarn, "Truth, Justice and Reconciliation in Africa: Issues and Cases," *African Studies Quarterly* 8, no. 1 (2004).

⁹⁵ Priscilla B Hayner, "Fifteen Truth Commissions—1974 to 1994: A Comparative Study," *Human Rights Quarterly* 16, no. 4 (1994).. This article was later developed in her book *Unspeakable Truths: confronting State Terror and Atrocity*, published in 2001.

published in 1994, Hayner was invited by Boraine to comment on the TRC draft legislation.

While the membership is larger, the list so far reveals several important lessons. First, the role of Alex Boraine and the TRC preparatory conferences he organized cannot be overestimated in bringing this group of people together. Second, the community emerged and is rooted in the South African experience. Both Justice Goldstone and Alex Boraine note the importance of their formative experience as student-activist under apartheid in shaping their commitment for reconciliation.⁹⁶ Third, the members of this epistemic community hold not only theoretical expertise but also have firsthand experience of either directly participating or witnessing other truth-seeking processes (for example, Zalaquett in Chile, Hayner as a young intern in El-Salvador). Their personal experience strengthened the conviction that criminal trials are not the right solution, and at the same time, as noted by Zalaquett, “the contact with so many families of victims convinced me of the paramount importance and cathartic power of seeking to establish the truth.”⁹⁷

Causal Logic, Assumptions, and Framing

What are the main ideas of this emerging epistemic community? Clearly, the most prominent shared causal logic is between truth or more precisely the process of truth-seeking, and reconciliation and healing, as well as the positive effects of reconciliation

⁹⁶ Richard J Goldstone, *For Humanity: Reflections of a War Crimes Investigator* (New Haven, CT: Yale University Press, 2000).; Richard J Goldstone, "interview by the author, tape recording," (Harvard University, Cambridge, MA).; Alex Boraine, "interview by the author, tape recording," (International Center for Transitional Justice, New York, NY).

⁹⁷ Jose Zalaquett, "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations," *Hastings Law Journal*, Vol. 43, p. 1425, August 1992. Jose Zalaquett, "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations," *Hastings Law Journal* 43, no. 6 (1992): 1425.

and healing on nation-building and democratization. At this point, these causal logics are general and lack proper theoretical or empirical support. Nevertheless, they reflect the shift from negative to positive rationalization in the framing of truth commissions. Accordingly, truth commissions are no longer a compromising alternative secondary to trials. Instead, a truth commission, modeled like the TRC, is framed as a successful mechanism for achieving the distinct goals of reconciliation and healing and reflects the underlying principle that retribution is not essential, while the truth is.⁹⁸

The positive framing of truth commissions rests not only on the idea that the truth is essential but also on the notion that they perform better than trials. This aspect of the positive framing is grounded in a new typology of truth. As noted by Archbishop Tutu, there are several types of truth: a forensic-factual truth, which uncovers suppressed information; a social truth, which produces a public and shared version of the past; and, “the truth of the wounded memories – a healing truth.”⁹⁹ As the logic goes, while trials may establish the first type of truth, only a truth commission could fulfill all three. This logic, therefore, frames truth commissions as a superior mechanism for truth-seeking.¹⁰⁰

At this point, members of the community share the view that truth commissions are context-specific and note that “whether intensive truth-seeking should be a universal norm ... [is] still open for debate.”¹⁰¹ Many of the arguments in support of truth commissions are addressing the leading paradigm of universal legalism. Therefore,

⁹⁸ Charles Villa-Vicencio, “A Different Kind of Justice: The South African Truth and Reconciliation Commission,” *Contemporary Justice Review* 1, no. 4 (1998).

⁹⁹ Desmond Mpilo Tutu, *No Future Without Forgiveness* (New York, NY: Random House, 2000), 26.

¹⁰⁰ Piers Pigoum, former TRC investigator, notes that the South African TRC was not so much about recovering knowledge. The history of apartheid was mostly known and so was the fate of most victims. In fact, only in 10 percents of the cases there was need for information about what happened to victims, cited in Brandon Hamber, “Ere their story die: truth, justice and reconciliation in South Africa,” *Race & Class* 44, no. 1 (2002): 65, fn. 11.

¹⁰¹ Priscilla B Hayner, “International Guidelines for the Creation and Operation of Truth Commissions: A Preliminary Proposal,” *Law and Contemporary Problems* 59, no. 4 (1997): 174.

contextual conditions are emphasized. Truth commissions are framed as a domestic affair and members do suggest some caution when exporting the model:

It is important to recognize that it is neither possible nor desirable to impose the South African Model on any other society. This is not to suggest, however, that South Africa cannot contribute to other countries in transition... (and for countries in conflict) ... there are some mature democracies which are facing challenges to their own incomplete transitions and which find it difficult to come to terms with their past.¹⁰²

At the same time, however, there is a shared assessment of the success of the TRC's or at least that "it was sufficiently successful and led to the recognition that there is something to be gained."¹⁰³ Rosenberg, for example, believes that "[the TRC] impact may seem even greater as times go on,"¹⁰⁴ and Hayner expects "that truth commissions are fast becoming a staple in the transitional justice menu of options."¹⁰⁵ There is a general consensus that the need for reconciliation and healing, and hence for truth-seeking, is universal, and members of the community actively began exporting the TRC model. For example, community members have vigorously participated in subsequent commissions and in establishing organizations committed to the spreading of the truth-seeking principle.¹⁰⁶

¹⁰² Alex Boraine, *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission* (New York, NY: Oxford University Press, 2000), 379. The examples of mature democracies, which are facing their past, include Japan, China, Switzerland, and the United States.

¹⁰³ Richard J Goldstone, "interview by the author, tape recording," (Harvard University, Cambridge, MA).

¹⁰⁴ Tina Rosenberg, "Forward to Meredith Martin," in *Coming to Terms: South Africa's Search for Truth* (New York, NY: Public Affairs 1999).

¹⁰⁵ Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, NY: Routledge, 2001), 250.

¹⁰⁶ Charles Villa-Vicencio established the Institute for Justice and Reconciliation to follow up on the consequences of TRC within South Africa and to focus on transitional justice issues around the world; Alex Boraine founded the International Center for Transitional Justice (more on that in chapter 7).

Pattern of Influence

Both the formal (conferences and advisory committees) and informal settings (personal meetings and contacts) of the community's activity are also the settings where members of the epistemic community get together with local decision-makers and in which they conveyed their rationales. For example, Alex Boraine reports on his meetings with leaders from Ghana and Sierra Leone before and during their process of negotiations.¹⁰⁷ He has also reported informal meetings with US Senator George Mitchell (the facilitator of the Good Friday Agreement) who was interested in the idea of constituting a truth commission in the Northern Ireland conflict.¹⁰⁸

The main pattern that emerges is of members of the epistemic community becoming "truth-seeking experts," who travel around the world sharing their experience and consulting about the goals and operational design of truth commissions. In this process, the "wonder of South Africa" is without a doubt the main resource. According to Archbishop Tutu "our South African experience showed that almost no situation could be said to be devoid of hope," and aroused great interest in places where one would not have originally considered the truth commission option at all, like Rwanda and Bosnia.¹⁰⁹

Another important channel of influence is the publications of policy guidelines – "truth commissions' manuals" – for the creation and operation of truth commissions. The

Alex Boraine, "interview by the author, tape recording," (International Center for Transitional Justice, New York, NY).

¹⁰⁸ Alex Boraine, *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission* (New York, NY: Oxford University Press, 2000), 410.

¹⁰⁹ Archbishop Tutu writes about his visit to Rwanda where he introduced the TRC's experience. He notes that even though the circumstances of the genocide in Rwanda were different; many locals found the TRC approach to reconciliation and healing appealing. See, Desmond Mpilo Tutu, *No Future Without Forgiveness* (New York, NY: Random House, 2000), 260. In Bosnia, the South African experience created an apparent change of heart (see following chapter).

first of many was published in 1997 by Priscilla Hayner.¹¹⁰ Overall, the goal of these manuals has been to “articulate specific methodological and operational lessons gleaned from inside these commissions (South Africa and Guatemala) that might be of use to future commissions likely to confront many of the same issues.”¹¹¹ In general, these manuals shy from normative arguments in support of truth-seeking commissions. Instead, they present in a neutral language the pragmatic rationale for truth commissions.

Concluding Discussion

The political process leading to the South African TRC was not very different from the processes leading to the Latin American commissions in the late 1980s and early 1990s. Like earlier commissions, the South African TRC “was a manifestation of political compromise and negotiated settlement,” and motivated by the need to balance between the feasibility and stability of the democratic transition and demands for justice and accountability.¹¹² As noted by Archbishop Tutu, “our country’s negotiators rejected the two extremes and opted for a “third way,” a compromise between the extreme of Nuremberg trials and blanket amnesty and national amnesia.”¹¹³ The designers of the

¹¹⁰ Priscilla B Hayner, “International Guidelines for the Creation and Operation of Truth Commissions: A Preliminary Proposal,” *Law and Contemporary Problems* 59, no. 4 (1997).

¹¹¹ Joanna R Quinn and Mark Freeman, “Lessons Learned: Practical Lessons Gleaned from Inside the Truth Commissions of Guatemala and South Africa,” *Human Rights Quarterly* 25, no. 4 (2003): 1117.

¹¹² Kenneth Christie, *The South African Truth Commission* (London, UK: Macmillan, 2000), 76.; Johnny de Lange, “The historical context, legal origins and philosophical foundation of the South African Truth and Reconciliation Commission,” in *Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, ed. Charles Villa-Vicencio and Wilhelm Verwoerd (Cape Town, South Africa: University of Cape Town Press, 2000).

¹¹³ Desmond Mpilo Tutu, *No Future Without Forgiveness* (New York, NY: Random House, 2000), 30.

TRC needed, on the one hand, to legitimize this political compromise, and at the same time to assure the “old guard” that the TRC is not a modern “witch hunt.”¹¹⁴

Even though the initial motivation for the unique focus on reconciliation and healing was political and strategic; the consequences of focusing on these goals were far reaching. Instead of a “second-best” tool for justice, the truth-seeking process in South Africa has been conceived and rationalized in more ambitious terms, that is, as a way to transform South Africa from a divided nation into a unified and democratic nation. The truth-seeking process was more than part of the political transition. It was the essence of a much broader process; namely, the transformation of South Africa – polity and society – of its structure, culture, and defining values.¹¹⁵

What made the design and goals of the South African TRC so unique? In this chapter I identified three factors that influenced and shaped the unique path of the TRC. The first factor was the post-Cold War international context, in which there was a growing interest in questions of political transitions and specifically on the issue of post-transition justice. Another relevant aspect of the international context was the rise of intra-state conflicts and the specific challenges of reconciliation exhibited by this type of conflicts. The second factor was the South African domestic context, in which important local initiatives during the struggle against apartheid emphasized the importance of reconciliation. The third factor that accounts for the unique path of the TRC was the

¹¹⁴ Alex Boraine, “Truth and Reconciliation Commission in South Africa: Amnesty, the Price of Peace,” in *Retribution and Repatriation in the Transition to Democracy*, ed. Jon Elster (New York, NY: Cambridge University Press, 2006).

¹¹⁵ Willie Esterhuse, “Truth as a trigger for transformation: from apartheid injustice to transformational justice,” in *Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, ed. Charles Villa-Vicencio and Wilhelm Verwoerd (Cape Town, South Africa: University of Cape Town Press, 2000).; Claire Moon, “True Fictions: Truth, Reconciliation, and the Narrativisation of Identity,” in *The Political Uses of Narrative Workshop, The ECPR Conference* (Mannheim, Germany: 1999).; Molly Andrews, “Grand national narratives and the project of truth commissions: a comparative analysis,” *Media Culture & Society* 25, no. 1 (2003).

leadership of Archbishop Tutu and Alex Boraine, who both came from religious background and genuinely believed in the need for reconciliation. Above all, they understood the symbolic and strategic value of reconciliation.

Tough important, the unique features of the TRC by themselves do not account for the emergence of the international norm of truth-seeking. My model proposes that a successful, or seemingly successful, case is a necessary condition for norm emergence. This case enhances the international publicity of a domestic practice and provides the setting for the consolidation of the epistemic community. Indeed, the South African TRC meets this proposition. Even before the decision to have a TRC, international attention was exceptionally attuned to the struggle against apartheid and followed closely the process of regime change in South Africa. This international predisposition grew only deeper following the TRC publicity. The notion that the TRC accounts for the prevention of bloodshed in South Africa along with the rhetoric of positive expectations that was used extensively in the TRC's intentional "success campaign" have captured the imagination of international audiences. According to Alex Boraine, "to understand why this proliferation [of truth commissions] is taking place, why the interest is so great has to do with some of the unique features of the South African Commission, in particular the fact that it was the very first ever to hold its hearings in public."¹¹⁶

The unique design, especially the public hearings, of the TRC was widely perceived as a model that successfully overcomes the conflicting needs and demands of both victims and perpetrators, thereby offering a great promise for the future of not only South Africa but also for other countries: "if South Africa is not offering us an ideal

¹¹⁶ Alex Boraine, "interview by the author, tape recording," (International Center for Transitional Justice, New York, NY).

example of what it means to seek social justice in the very act of seeking social forgiveness and reconciliation, it is at least a bright current in a murky business.”¹¹⁷ Journalist Tina Rosenberg, for example, argued that the TRC’s main significance is that it is a model for other states to learn from.¹¹⁸ Indeed, the South African TRC, more than any other truth commission before or after, became the template for goals and the design of all future truth-seeking processes.

The second part of my proposition is that the “successful case” brings together a group of like-minded professionals – epistemic community – that becomes the international norm “suppliers.” In South Africa, the TRC’s preparatory conferences organized by Alex Boraine facilitated the growing intellectual exchange among those who shared the causal logic between the truth-seeking process and thick reconciliation and collective healing. These conferences account for the articulation of this causal logic as well as for the personal contacts that were established among members of the epistemic community. After its completion and in light of its perceived success, the South African TRC created “truth-seeking experts” who travel to many countries in transition and publish policy manuals delivering their causal logic worldwide.

Notably, the process of this norm’s content change already began in South Africa. Prior to the TRC, trials were viewed as morally superior to truth commissions in accounting for past legacies of human rights violations and were abridged only because political constraints.¹¹⁹ During the TRC, the discourse of reconciliation and healing

¹¹⁷ Donald W. Shriver, “Where and When in Political Life is Justice Served by Forgiveness,” in *Burying the Past: Making Peace and Doing Justice After Civil Conflict*, ed. Nigel Biggar (Washington, DC.: Georgetown University Press, 2003), 26.

¹¹⁸ Tina Rosenberg, “Forward to Meredith Martin,” in *Coming to Terms: South Africa’s Search for Truth* (New York, NY: Public Affairs 1999).

¹¹⁹ Bronwyn Anne Leebaw, “Legitimation or Judgment? South Africa’s Restorative Approach to Transitional Justice,” *Polity* 36, no. 1 (2003).; Jonathan Allen, “Balancing Justice and Social Unity:

replaced the discourse of political compromise in a way that cast the truth-seeking process as a unique and positive alternative to trials. Truth commissions are no longer a “second best” but rather have their own distinct goals, hence their own moral justification. In this sense, the South African TRC provided the initial context for a genuine and significant qualitative change in the characterization, goals, and principles of the truth-seeking process as practiced by national truth and reconciliation commissions.

Chapter 6

Elevating Truth: Changes in the “Logic of Appropriateness” of Truth-Seeking Commissions

[A Truth and Reconciliation Commission] should not be seen as a necessary evil. A second-best choice, when prosecution and general amnesty are politically problematic. It provided the only justice available in the context of a traumatic transition. *The South African model is not an abdication of justice, it is a form of justice particularly suited to the uniqueness of the transitional context.*¹

The South African TRC introduced to its design and goals the causal logic linking truth-seeking to healing and reconciliation and to their positive effects on nation-building and democratization. Moreover, the South African TRC brought together a community of experts that abide by and is committed to this logic. Yet, was South Africa a unique case? Are these principles universally generalizable? The practical, theoretical, and philosophical dimensions of these questions were at the heart of the debates that took place during and following the South African TRC.

Within the chronology presented so far, this chapter roughly covers the years of the South African TRC (1995-1998) up to the early 2000s. However, chronologies tend to create the wrong impression that ideational processes are linear and consensual. Instead, my analysis focuses on the debates over the question: are truth commissions a “good” thing and whom are they “good” for? Specifically, I identify three main debates that framed and reframed the “logic of appropriateness” of truth-seeking commissions.

The first debate, the truth v. justice debate, revolved around the question of whether the South African model is generalizable. For the most part, the participants in this debate accepted the principle of truth-seeking and recognized the South African TRC

¹ Alex Boraine, *A Country Unmasked*, Oxford University Press, 2000. p. 427. Italic added.

as “the model for all future commissions.”² Arguments in this debate elaborated and developed the causal rationales that link the truth-seeking process with an array of goals. Essentially, these arguments broadened the range of positive effects associated with a well-designed truth commission. The debate also focused on assessing the utility of truth commissions relative to trials in transitional settings. In these, largely theoretical assessments, truth commissions often performed better and were deemed the more appropriate mechanism for states in transition.

The truth v. justice debate had three additional significant effects on the framing of why a truth commission is positive and what or whom it is good for, that is, on the framing of the “logic of appropriateness” of truth-seeking commissions. First, it elevated the normative standing of the truth-seeking process. The restorative justice approach set forward that truth is itself a form of justice and placed truth commissions on equal moral grounds with trials. Second, few of the new rationales that were developed in the debate were applied to the context of conflict resolution. There was a growing emphasis that truth-seeking commissions are appropriate and useful not only for political transitions, but can also facilitate peace-building processes. This development makes truth-seeking commissions potentially congruent with more contexts and settings. Finally, the debate facilitated the growth and consolidation of the epistemic community of like-minded practitioners and scholars.

The second debate captures the renewed opposition from advocates of the punitive model. For many human rights activists and legal scholars truth commissions were an abdication of justice and so they voiced a great concern over their international

² Robert I. Rotberg, “Truth Commissions and the Provision of Truth, Justice, and Reconciliation,” in Rotberg and Thompson. p. 6.

spread following South Africa. Since the new rationales for truth commissions highlighted their distinct goals and merits, this opposition turned into a broader consensus. Essentially, this consensus accepts that both truth commissions and trials may be necessary for dealing with the legacy of human rights atrocities. Accordingly, the renewed opposition strengthened, rather than weakened the truth-seeking principle.

The third debate marks the boundaries of the consensus about the truth-seeking principle. There has been ongoing scholarly criticism on the truth-seeking model. Some scholars object to the framing of truth commission as a national affair, while others reject the notion of national healing or the idea that a truth is at all possible. For the most part, these arguments remained in the margins of the truth-seeking discourse. Their marginalization only demonstrates the strength of the consensus that has emerged.

In the scheme of my argument, this chapter identifies the predicted changes in the “logic of appropriateness” of truth commissions, including goal-broadening, the specification of the practice, and the normative elevation of the truth-seeking principle. The three debates I analyze reframed and sharpened the logics that support the policy choice of truth commission. Consequently, there are more and better reasons for truth commissions, which make this policy choice more likely to be adopted by more states.

The Truth v. Justice Debate

Already in 1997, in a famous and widely-cited article in *Human Rights Quarterly*, Juan E. Mendez, an Argentinean political activist and the former General Counsel of Human Rights Watch argued that when “dealing with the past,” truth-telling and

prosecutions are addressing distinct obligations and duties.³ This argument represents the significant shift from framing truth-seeking as a weaker alternative for trials to the debate over the distinct goals, tradeoffs, and relative merits of each of these practices. At the theoretical level, this debate was framed not only between truth commissions and trials, but also between truth and justice.

The truth v. justice debate took place in roundtable discussions and academic conferences as well as over the pages of numerous articles.⁴ Commonly, the operation of the South African TRC was the starting point for deducing and developing general and universal causal logics that link truth commissions with a set of goals and evaluating the relative performance of truth commissions in achieving these goals. According to Alex Boraine, “dealing with the past is inescapable ... for the sake of justice, for stability and the restoration of dignity of victims.”⁵ Indeed, these three rationales – legal-normative, political-practical, and psychological – defined this debate.⁶ On the whole, advocates of truth commissions argued that truth commissions may achieve any of the goals of criminal prosecutions and in attaining these goals truth commission may, in fact, perform

³ Juan E. Mendez, “Accountability for Past Abuses,” *Human Rights Quarterly*, Vol. 19, No. 2, 1007, pp. 255-282.

⁴ The *Truth V. Justice* title of this section takes after the edited volume: Robert I. Rotberg and Dennis Thompson (eds.), *Truth V. Justice: The Morality of Truth Commissions*, Princeton University Press, 2000. This book originated in a May 1996 roundtable discussion sponsored by the World Peace Foundation and the Human Rights Program at the Harvard Law School. Two years later (May 1998) it followed with a conference in South Africa and later with the publication of the edited volume. The *Truth V. Justice* volume was by no means the only setting of the debate, additional major conferences that resulted with edited volumes include: Charles Villa-Vicencio and Wilhelm Verwoerd, *Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, University of Cape Town Press, 2000. Nigel Biggar (ed), *Burying the Past: Making Peace and Doing Justice After Civil Conflict*, Washington D.C., Georgetown University Press, 2003; Alexandra Barahona de Brito, Carmen Gonzalez-Enriquez and Paloma Aguilar, *The Politics of Memory: Transitional Justice in Democratizing Societies*, Oxford UK: Oxford University Press, 2001.

⁵ Alex Boraine, *A Country Unmasked*, Oxford University Press, 2000, p. 6.

⁶ These rationales are presented in Rama Mani’s typology for the goals of truth commissions. The following analysis, however, is significantly broader than Mani’s arguments Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War*, 2002.

better than trials. In addition to the discussion over goals this debate raised many meta-ethic questions, such as what constitutes justice and truth, and highlighted the potential compatibility between these two concepts.⁷

The Psychological Rationale

Arguments about the positive psychological effects of truth-seeking and truth-telling largely echoed the themes that developed during the South African TRC. At the individual level, the process of truth-telling supposedly has healing or therapeutic qualities and by having their story heard and acknowledged victims can achieve civil and human dignity and closure.⁸ These argument gained support from studies of trauma and torture victims and Holocaust survivors. These studies found that the process of producing as systematic testimony that records the torture victims experience about their traumatic events help the victims “integrate the traumatic experience into their life,” and can channel anger as well as provide a form of catharsis.⁹

Specifically relative to trials, studies of torture victims found that victims care less about the punitive outcome of the trials and more about being heard by impartial

⁷ Joel Rosenthal, “What Constitutes an Ethical Approach to International Affairs? Lecture 1 of six lectures delivered by the Carnegie Council President, Joel Rosenthal, at the Fletcher School of Diplomacy, Tuft University, 2000-2001 academic year. Carnegie Council on Ethics and International Affairs. Available at, www.cceia.org.

There are some earlier arguments for the superiority of truth commissions over trials, but they are by no means a reflection of any consensus in the early to mid-1990s. Charles Krauthammer, “Truth, Not Trials: A way for the newly liberated to deal with the crimes of the past,” *Washington Post*, 9 September 1994, A27; Neil A. Lewis, “Nuremberg Isn’t Repeating Itself,” *The New York Times*, 19 November 1995, E5. Both cited in, Juan E. Mendez, “Accountability for Past Abuses,” *Human Rights Quarterly*, Vol. 19, No. 2, 1007, pp. 255-282.

⁸ Dumisa B. Ntsebeza, “The Uses of Truth Commissions: Lessons for the World,” in Rotberg, Robert I. and Thompson, Dennis, eds. *Truth V. Justice*. Princeton, NJ: Princeton University Press: 158-169; Goldstone, Richard J. (2000) *For Humanity: Reflections of a War Crimes Investigator*. New Haven, CT & London: Yale University Press. P. 65.

⁹ Naomi Roht-Arriaza, “Punishment, redress, and Pardon: Theoretical and Psychological Approaches,” in *Impunity and Human Rights in International Law and Practice*, Oxford University Press, 1995. P. 19.

arbitrator.¹⁰ Alex Broain argued that in trials, victims are in a foreign setting with its own jargon and rules that are alien to them. In a truth commissions setting the victims' hearings are deliberately designed to be embracing and supportive.¹¹ According to Laurel Fletcher and Harvey Weinstein, the lengthy litigation in trials, which features a two-oppositional structure, may be therapeutically counterproductive for victims.¹² In truth commissions, on the other hand, victims are not cross-examined as if they are themselves on trial. They can share their feelings and emotions in a positive setting as opposed to being limited to reporting factual information.

The psychological rationale also echoed the idea that the healing power of truth not only affects individual victims but also fulfills the collective need for healing and catharsis.¹³ "Telling the truth about their wounds can heal the wounded – and perhaps listening to such stories can help heal societies."¹⁴ Advocates of this argument, like the legal scholar Martha Minow and the ethics scholar Elizabeth Kiss, describe post-repression societies as "wounded" and traumatized and in need of "recovery" and "healing," especially as a precondition for national reconciliation.¹⁵ With regard to these goals of healing and interpersonal reconciliation it is argued here too that truth commissions outperform trials. In a legal process, according to Minow, "[the] reconstruction of relationship, seeking to heal the accused, or indeed, healing the rest of

¹⁰ David A. Crocker, "Reckoning with Past Wrongs: a Normative Framework," *Ethic and International Affairs*, Vol. 13 1999, pp. 43, 52.

¹¹ Alex Boraine, *A Country Unmasked*, Oxford University Press, 2000, p. 292.

¹² Laurel E. Fletcher and Harvey Weinstein, "Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation," *Human Rights Quarterly*, Vol. 24, No. 4, 2002, pp.573-639.

¹³ Minow, Martha. (2000) "The Hope of Healing: What Can Truth Commissions Do?" in Rotberg, Robert I. and Thompson, Dennis, eds. *Truth V. Justice*. Princeton, NJ: Princeton University Press: 253-260; Helena Cobban, "The Legacies of Collective Violence: The Rwandan genocide and the limits of law," *Boston Review*, April/May 2002.

¹⁴ Elizabeth Kiss, "Moral Ambition within and beyond Political Constraints," *Truth v. Justice*, pp.68-98. Quote p. 72.

¹⁵ Judy Baralou, "Trauma and Transitional Justice in Divided Societies," Special Report 135, April 2005 The United States Institute of Peace, Washington, DC, p.4-5; Martha Minow, p. 63.

the community, are not the goals [of trials] in any direct sense.”¹⁶ The process of truth-seeking and truth-telling, on the other hand, can help nations “face up to and understand past event before they can put them aside and move on to normal life.”¹⁷

The Practical-Political Rationale

In the truth v. justice debate the list of practical and political arguments advocating truth commissions over trials has been particularly long. Some of the arguments are old and echo the earlier logic that supported truth commissions as a political compromise which goal is political stability. Accordingly, the balance of power in times of transition, in which the old elite still holds many power resources, makes truth commissions often the only option available. In this context, prosecutions are likely to be divisive and may compromise the stability of the new state or regime. Truth commissions, on the other hand, strengthen the political stability by enhancing the accountability and legitimacy of the new regime in negation to the previous repressive one.¹⁸ Other arguments are newer or at least received renewed elaboration.

Practical arguments focused on the efficacy and efficiency of truth commissions. According to Robert Rotheberg, the initiator and editor of the Truth V. Justice volume, “Commissions can cope much more conclusively than even Nuremberg-like trials with the scale and quantity of violence perpetrated by the modern oppressive state.”¹⁹ Accordingly, human rights violations on a massive scale generally involve and implicate

¹⁶ Martha Minow, *Between Vengeance and Forgiveness*, p. 26.

¹⁷ Tina Rosenberg, *The Haunted Land: Facing Europe's Ghosts After Communism*, First Vintage Books Edition, 1996. p. xviii

¹⁸ Ruti G. Teitel, *Transitional Justice*, Oxford University Press, 2000, p. 6.

¹⁹ Robert Rotberg, Book Review of *Transitional Justice* by Ruti Teitel, *American Political Science Review*, Vo. 95, No.3, September 2001. p. 727.

a large part of the population.²⁰ Trials, therefore, would be either too costly or simply impractical.²¹ Truth commissions, on the other hand, can begin functioning relatively quickly during or following the transition and they are less expensive and time consuming. Countries in transition, specifically, often lack the institutional (e.g., judicial system) and social foundations needed to support widespread prosecutions. Moreover, countries in transition are more likely to require the reintegration and rehabilitation of former perpetrators and collaborators into the broader society, functions which a truth commission can fulfill more successfully.²²

Beyond the practical and political stability logics, the truth v. justice debate set forward broader political logics for truth-seeking. As noted by Jose Zalaquett:

The commission's purpose is political in the broad sense that it helps to lay foundations for a new political system or to reconstruct a broken one. Such foundational moments recall John Rawls notion of an original position. That is not an actual historical moment but a conceptual one when people come together and ask themselves, 'why are we together? What values do we believe in? What is the best arrangement for justice?' In such foundational moments, which may involve 'refounding' a broken political order, nations must strive for establishing or reestablishing commonly shared values.²³

Three causal logics support the foundational political role of truth commissions. First, truth commissions can facilitate the structural and institutional reforms following the transition. Past atrocities are a collective social phenomenon. Naming and punishing perpetrators, even if the list is long, does not account for the structural and institutional

²⁰ Lyn Graybill and Kimberly Lanegran, "Truth, Justice and Reconciliation in Africa: Issues and Cases," *African Studies Quarterly*, Vol. 8, No. 1, Fall 2004. www.africa.ufl.edu/asq/v8/v8i1a1.htm

²¹ In Rwanda, for example, as of 2004 (a decade after the violence), there were more than 100,000 people still awaiting trial.

²² Charles Villa-Vicencio, "A Different Kind of Justice: The South African Truth and Reconciliation Commission" *Contemporary Justice Review* Vol. 1, 1998, pp. 411-432.

²³ Jose Zalaquett, in Henry J. Steiner (ed.), "Truth Commissions: A Comparative Assessment" (Transcript of an International Meeting), World Peace Foundation Number 16, Cambridge, MA 1997. p. 28.

conditions that fostered the human rights violations. The truth-seeking processes are more suitable for exposing these conditions and facilitating their reform.

Second, the truth-seeking process operates in active partnership with civil society and set the foundations for its continuing engagement within the new democratic state.²⁴ This partnership creates a public sphere with shared commitment to norms that denounce human rights violations. Moreover, the operation of truth commissions fosters the democratic elements of reciprocity and deliberation: “the very activity of providing an account that other citizens can be expected to understand as reasonable (or even right) indicates the willingness of citizens to acknowledge one another’s membership in the common democratic enterprise.”²⁵

Third, truth commissions produce a unifying national historical narrative, which is supposedly a crucial first step in nation-building.²⁶ Criminal prosecutions with their emphasis on individual liability are only interested in the truth that is relevant for establishing guilt and therefore fail to tell the whole story of the past abuses. Truth commissions, on the other hands, are increasing the quantity and quality of information about past abuses.²⁷ The personal suffering is publicly acknowledged and written into the national narrative, and the collectivity of the testimonies makes them powerful.²⁸ A unified and official historical record is likely to reduce the likelihood that polemic debates over history become a new source of conflict during or after the transition.

²⁴ Neil J. Kritz, “Progress and Humility: The Ongoing Search for Post-Conflict Justice, in M. Cherif Bassiouni (ed.), *Post-Conflict Justice*, Ardsley, NY: Transnational Publishers, Inc. 2002. pp. 55-87. p. 61.

²⁵ Amy Gutmann and Dennis Thompson, “The Moral Foundation of Truth Commissions,” in Rotberg and Thompson, *Truth v. Justice*, p. 38.

²⁶ Kenneth Christie, p. 117.

²⁷ Ronald C. Slye, “Amnesty, Truth and Reconciliation: Reflections on the South African Amnesty Process,” in Rotberg and Thompson, pp. 170-188; Kent Greenawalt, “Amnesty’s Justice,” in Rotberg and Thompson, pp. 189-210.

²⁸ Molly Andrews, “Grand national narratives and the project of truth commissions: a comparative analysis,” *Media Culture & Society*, Vol. 25, No. 1, pp. 45-65.

Moreover, the official historical narrative is the basis for public education, which socializes the new post-repression generation by learning the lessons of the past and promoting a culture of human rights.²⁹ According to scholar Ruti Teitel, the official national narrative “plays an important transitional role linking past to present” while at the same time drawing a line that both “redefine the past and reconstruct a state’s political identity”³⁰

The overarching conception that stemmed from the above ideas is the broadening of the democratizing effects that are associated with truth commissions. Accordingly, truth commissions may not only strengthen the accountability, legitimacy, and stability of the new regime and may not only address the institutional or formal structures of democracy; instead, truth commissions help constitute and advance a “true” democratic political culture.³¹ Truth commissions have multiple democratizing effects, including: advancing the creation of a public sphere via the deliberative dialogue over truth; fostering a culture of human rights by the shared commitment to norms that denounce human rights violations; promoting reconciliation, which is an element of democratic coexistences; and, establishing an official historical narrative that reconstruct the states’ new democratic identity.

²⁹ Jeremy Sarkin, “The Necessity and Challenge of Establishing a Truth and Reconciliation Commission in Rwanda,” *Human Rights Quarterly*, Vol. 21, 1999. pp. 767-823.

³⁰ Teitel, Ruti G. (2000) *Transitional Justice*. New York, NY: Oxford University Press. P. 8 *Italic added*.

³¹ Kader Asmal, Louise Asmal, and Ronlad Suresh Roberts, *Reconciliation through Truth: A Reckoning of Apartheid’s Criminal Governance* (New York, NY: St. Martin’s Press, 1997); Rosenberg, Tina. (1999) “Forward” in Meredith, Martin. *Coming to Terms: South Africa’s Search for Truth*. New York, NY: Public Affairs.

Not everyone agrees that there is a direct causal link between truth-seeking and democratization. But even critics within this debate argue that truth-seeking can set in motion a dynamic for wider democratic reforms. Alexandra Barahona de Brito, Carmen Gonzalez-Enriquez and Paloma Aguilar, *The Politics of Memory: Transitional Justice in Democratizing Societies*, Oxford UK: Oxford University Press, 2001. p.32

The Legal-Normative Rationale

Punishment, deterrence, and the prevention of future violence are the three legal goals commonly associated with criminal prosecution. In the truth v. justice debate advocates of truth commissions argued that trials are not the most or the only suitable tool for attaining these goals. Some even challenged the essentiality of these goals altogether. According to Martha Minow, truth commissions “punish by shame” via the public exposure of crimes and can also be an effective deterrent.³² Others argue that trials reinforce group demarcation and that witnesses to the trials tend to “take sides” and view members of their own group as victims of injustice.³³ Truth commissions, on the other hand, may remove incentives for revenge and break the actual or potential cycle of resentment and violence.

Punishment, specifically, drew normative objections stating that a right and righteous policy ought to “break the cycle of pain infliction.”³⁴ By and large, moral questions and the morality of truth commissions became a focus for many in this debate. As stated by Jose Zalaquett: “Following a major breakdown of the rule of law and basic civic values, a society must reconstruct its moral underpinning. Truth Commissions can be a part, perhaps the cornerstone, of such a process of moral reconstruction.”³⁵ Truth

³² Minow, “The Hope for Healing: What Can Truth Commissions Do?” In Rotberg, p. 253. Mendelof p. 361; quoting Sarkin 1999

³³ Laurel E. Fletcher and Harvey Weinstein, “Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation,” *Human Rights Quarterly*, Vol. 24, 2002. pp. 573-639 (592)

³⁴ Zalaquett, fn 31 in Leebaw.

³⁵ In Henry J. Steiner (ed.), “Truth Commissions: A Comparative Assessment; A Transcript of an International Meeting, World Peace Foundation Number 16, Cambridge, MA 1997. Respectively, p. 15. p. 22; Jonathan Allen, “Balancing Justice and Social Unity: Political Theory and the Idea of a Truth and Reconciliation Commission,” *University of Toronto Law Journal*, Vol. 49, no. 3, Summer 1999, p. 322.

commissions will “reclaim the moral high grounds by telling what actually took place,”³⁶ and they are moral in their practice of participation and reciprocity.³⁷

For the most part, the narrative of the truth v. justice debate was that truth commissions can achieve broader goals and that they may do better (then trials) in achieving these goals. In the scholarly arguments about truth commissions there has been a distinctive shift from the early 1990s ideas that the truth-seeking process is a mean for achieving specific political goals, such as legitimacy and political stability, to the idea that the truth-seeking process has multiple positive effects and is an important mechanism for social reconstruction.

The truth v. justice debate did not place truth commissions and trials in an all-out competition, but rather as having different relative merits.³⁸ Indeed, one of the most significant aspects of this debate was that truth commissions were positioned for the first time on equal grounds with their judicial alternative. According to law professor Naomi Roht-Arriaza, truth commission were no longer “a second-best alternative where trials were unavailable,” but instead can “accomplish things no trial could provide.”³⁹ Notably, in this emerging discourse the array of goals that may be achieved by the truth-seeking process – psychological, practical-political, and legal-normative – is deemed essential for societies emerging from repressive regime or civil conflict.

³⁶ This idea is expressed by Fateh Azzam, Kanan Makiya and Bryan Hehir in Henry J. Steiner (ed.), “Truth Commissions: A Comparative Assessment; A Transcript of an International Meeting, World Peace Foundation Number 16, Cambridge, MA 1997. p. 17 and 18. p. 22. respectively.

³⁷ Amy Gutmann and Dennis Thompson, “The Moral Foundation of Truth Commissions, Robert Rotberg and Dennis Thompson, 2000, pp. 22-44.

³⁸ Bronwyn Anne Leebaw, *Judging the Past: Truth, Justice and Reconciliation from Nuremberg to South Africa*, Unpublished PhD Dissertation, University of California, Berkeley, 2002. Copy with the author.

³⁹ Naomi Roht-Arriaza, “The new landscape of transitional justice,” p. 4.

Conceptual Outcomes of the Truth V. Justice Debate

In addition to broadening the goals of the truth-seeking process and the positive evaluation of the performance of truth commissions, the truth v. justice debate had two significant outcomes: first, the moral elevation of truth that is embedded in the notion that truth is in itself a form of justice; second, the broadening of the scope of settings and contexts where the truth-seeking process is deemed appropriate.

Truth is Justice

Since the early truth commissions in the mid-1980s the trade-offs and choice between trials and truth commissions has been also conceptualized as a choice between justice and truth.⁴⁰ The consensus was that trials represent a “real” justice.⁴¹ In the truth v. justice debate, therefore, much has been argued for the potential of truth commissions to achieve justice. Restorative justice has become the main conceptual and normative framework for addressing justice-based critique. It offered a way out from the dichotomy between justice and truth.⁴²

⁴⁰ Jennifer J. Llewellyn, “Restorative Justice in Transitions and Beyond: The Justice Potential of Truth-Telling Mechanisms for Post-Peace Accord Societies,” in Tristan Anne Borer (ed.), *Telling the Truth: Truth Telling and Peace Building in Post-Conflict Societies*, Notre Dame, Indiana: University of Notre Dame Press, 2006. pp. 83-113; Bronwyn Anne Leebaw, *Judging the Past: Truth, Justice and Reconciliation from Nuremberg to South Africa*, Unpublished PhD Dissertation, University of California, Berkeley, 2002. Copy with the author.

⁴¹ Paul Seils, “The Limits of Truth Commissions in the Search for Justice: An Analysis of the Truth Commissions of El Salvador and Guatemala and their Effect in Achieving Post-Conflict Justice,” in M. Cherif Bassiouni (ed.), *Post-Conflict Justice*, Ardsley, NY: Transnational Publishers, Inc. 2002. pp. 775-795.

⁴² David A. Crocker, “Truth Commissions, Transitional Justice, and Civil Society,” in Rotberg and Thompson, pp. 99-121; Teitel, Ruti G., “Human Rights in Transition: Transitional Justice Genealogy,” *The Harvard Human rights Journal*, Vol. 16, Spring 2003, p. 76; Kiss, Elizabeth. (2000) “Moral Ambition Within and Beyond Political Constraints: Reflections on Restorative Justice,” in Rotberg, Robert I. and Thompson, Dennis, eds. 2000. *Truth V. Justice*. Princeton, NJ: Princeton University Press: 68-98; Paul Van Zyl, “Justice without punishment: guaranteeing human rights in transitional societies,” in Charles Villa-Vicencio and Wilhelm Verwoerd, *Looking Back Reaching Forward*, University of Cape Town Press, 2000. pp. 42-75.

The restorative approach to justice developed in the United States domestic criminal system. It has focused on the idea that a procedure of dialogue between victims and offenders is more suitable than trials for restoring the victim's sense of personal autonomy.⁴³ This approach is victim-centric yet at the same time it emphasizes the reintegration of offenders as a way to rebuild the community and to reestablish civic legitimacy and accountability.⁴⁴ These key elements of the restorative justice approach echoed with the practice of truth-seeking and truth-telling via truth commissions and became a common normative frame of reference.

The use of the concept restorative justice entered the discourse in the TRC report. Later it became widely used in many post-hoc assessments of the South African TRC as a framework for the analysis of its goals and process.⁴⁵ In the truth v. justice debate restorative justice became the anchor of normative arguments. Martha Minow, for example, argues that "unlike punishment, which imposes penalty or injury for violation, restorative justice seeks to repair the injustice, to make up for it and to effect corrective changes in the record, in relationships, and in future behavior"⁴⁶ And Nigel Biggar notes that "[it] is common to think of criminal justice primarily, even wholly, in terms of the

⁴³ Some relate the idea of restorative justice to French philosopher Jacques Derrida. Derrida argued that justice cannot be measured by sanctions; rather, justice is impossible, and "the closest we can come to justice is to relate to the other." See, Ebrahim Moosa, "Truth and reconciliation as performance: specters of Eucharistic redemption," in Charles Villa-Vicencio and Wilhelm Verwoerd, *Looking Back Reaching Forward*, University of Cape Town Press, 2000. pp.113-122. quote p. 120.

⁴⁴ Dzur, Albert W. (2003) "Restorative Justice and Civic Accountability for Punishment," *Polity*, XXXVI, Number 1: 3-26.

⁴⁵ Charles Villa-Vicencio, "'Restorative Justice: Dealing with the Past differently,'" in Charles Villa-Vicencio and Wilhelm Verwoerd, *Looking Back Reaching Forward*, University of Cape Town Press, 2000. pp. 68-76.

⁴⁶ Martha Minow, *Between Vengeance and Forgiveness*, p. 91.

punishment of the perpetrators... this is a mistake, because justice is primarily not about the punishment of perpetrators, but about the vindication of the victims.”⁴⁷

The restorative justice framework integrated many of the psychological and political rationales for truth commissions into one coherent conception of justice. The healing of individuals and society, along with deliberation and reconciliation, and the incorporation of perpetrators into the newly reconstructed society are not only distinct goals of the truth-seeking process; instead they are all elements of justice – a restorative justice. Accordingly, “the truth or more precisely the process of truth-seeking, truth-telling, and truth-publishing is in itself a form of justice.”⁴⁸

Before the South African TRC and before the truth v. justice debate the discourse was that truth commissions sought “justice to the extent possible.”⁴⁹ Thereby, reflecting the early 1990s consensus that truth commissions may achieve “less” justice and are morally acceptable only because they are a necessary political compromise. The restorative justice approach elevated the moral standing of the truth-seeking process. The new discourse is that there are no tradeoffs between truth and justice; instead, these are two competing, yet equal, approaches for justice - restorative and retributive. The truth-seeking process, therefore, embodies the restorative approach that is morally equal, and in some aspects even superior, to the retributive judicial approach.⁵⁰

⁴⁷ Nigel Biggar, “Making Peace or Doing Justice: Must we Choose?” in Nigel Biggar (ed), *Burying the Past: Making Peace and Doing Justice After Civil Conflict*, Washington D.C., Georgetown University Press, 2003. pp. 3-24 Quote p.7; Michael Humphrey, “From Victim to Victimhood: Truth Commissions and Trials as Rituals of Political Transition and Individual Healing.” *The Australian Journal of Anthropology*, 2003, Vol. 14, No. 2 pp. 171-187.

⁴⁸ Teresa Godwin Phelps, *Shattered Voices: Language, Violence and the Work of Truth Commissions*, Philadelphia, PA: University of Pennsylvania Press, 2004.

⁴⁹ Jose Zakaquett, *Report of the Chilean National Commission on Truth and Reconciliation* (English Edition – Introduction).

⁵⁰ Leebaw, Bronwyn. (2003) “Legitimation or Judgment? South Africa’s Restorative Approach to Transitional Justice,” *Polity*, Volume XXXVI, Number 1: 23-51.

Negotiating and Resolving Conflicts with Truth

The second significant outcome of the truth v. justice debate was that both in practice and in theory truth commissions are conceived not only as a post-transition mechanism, but as part of a negotiated peace agreement to end violent conflicts within or between states.⁵¹ While the relationship between truth-seeking and peace was not new,⁵² it regained interest following the post-South African emerging consensus about the nexus between truth and reconciliation. In the peace-building literature peace and reconciliation are “inevitably conjoined.”⁵³ Good enough relations between individuals and groups are needed in order to foster basic trust, respect, and cooperation and are therefore particularly important in early stages of peace negotiations.⁵⁴ As the arguments goes, if truth-seeking indeed promotes reconciliation, then it is likely to be a useful tool for resolving conflicts.⁵⁵

⁵¹ Priscilla B. Hayner, “Past Truths, Present Dangers: The Role of Official Truth Seeking in Conflict Resolution and Prevention,” in Paul C. Stern and Daniel Druckman (eds.) *International Conflict Resolution After the Cold War*, Commission on Behavioral and Social Sciences and Education, National Research Council (Washington, D.C. National Academy Press, 2000, pp. 338-382.

⁵² The Commission on the Truth for El Salvador (1992) was the first truth commission to emerge out of a negotiated peace accord brokered by the United Nations. Two years later, the Guatemalan Historical Clarification Commission (1994) was established under similar circumstances. In these two commissions, however, the scope and the stated goals of the truth-seeking process were defined rather narrowly: a fact-finding process aimed at the disclosure of previously unknown or suppressed information. Reconciliation was by no means a main goal of these commissions as reflected by their mandate and report.

⁵³ Tristan Anne Borer, “Truth Telling as a Peace-Building Activity – A Theoretical Overview, in Tristan Anne Borer, *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies* (Notre Dame, Indiana, University of Notre Dame Press, 2006. pp. 1-57.

⁵⁴ *IDEA Handbook of Conflict Resolution*

⁵⁵ There were some earlier accounts that linked truth-seeking with reconciliation and intra-state conflict resolution. Henry J. Steiner (ed.), “Truth Commissions: A Comparative Assessment; A Transcript of an International Meeting, World Peace Foundation Number 16, Cambridge, MA 1997. For example, Yael Tamir raised several justifications for Israeli-Palestinian truth commission. (p.73-75).

In 1997, The Carnegie Cooperation mentions the important role of truth-seeking mechanisms for reconciliation during post-conflict reconstruction. Carnegie Commission on Preventing Deadly Conflict , Executive Summary of the Final Report, December 1997 available at <http://www.wilsoncenter.org/subsites/ccpdc/frpub.htm>

In the 1997 conference on Peace Processes in Latin America, Hayner argued that truth-telling is important for revealing the underlying causes of the conflict and the overall pattern of the violence. See, Priscilla Hayner, “In Pursuit of Justice and Reconciliation: Contributions of Truth Telling,” presented at conference

Reconciliation is not the only way in which truth-seeking and its associated consequences supposedly contribute to conflict resolution and to sustainable peace.⁵⁶ A second argument highlights the importance of healing to post-conflict reconstruction.⁵⁷ A truth-seeking process provides acknowledgment and vindication for victims and may, therefore, alleviate underlying feelings of resentment and desire for revenge.⁵⁸ The third argument is that a truth commission, as was the case in South Africa can become part of the negotiation game and may facilitate and legitimizes a compromise in the setting of conflict resolution.⁵⁹ Moreover, a commitment to a truth-seeking process during the negotiations could signal positive intentions and function as a confidence-building measure.⁶⁰

The fourth argument rests on the notion that “the embers of yesterday’s conflict can become the fire of tomorrows renewed conflict,”⁶¹ and that removing the “contested past” is essential for building a strong peace. Adversaries tell the history of their conflict in a way that portrays one side as victims and justifies its use of violence while delegitimizing the other side. Often, the contested history becomes in itself an important obstacle, which is inciting the conflict. A truth-seeking process has the capacity to

on Comparative Peace Processes in Latin America, Woodrow Wilson International Center for Scholars, Washington, DC, March 1997, Cited in Rama Mani, *Beyond Retribution*, p. 100, fn 65;

⁵⁶ Tristan Anne Borer, *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies* (Notre Dame, Indiana, University of Notre Dame Press, 2006).

⁵⁷ Michele Flournoy and Michael Pan, “Dealing with Demons: Justice and Reconciliation,” *The Washington Quarterly*, Vol. 24, no. 4, pp. 111-123.

⁵⁸ Michal Lund, “Reckoning for Past Wrongs: Truth Commissions and War Crimes Tribunals in Peter Harris and Ben Reilly (eds.), *Democracy and Deep-Rooted Conflict: Options for Negotiator*, International Institute for Democracy and Electoral Assistance Stockholm 1998; P. 281 pp. 281-298.

⁵⁹ Alex Boriane, interview by the author, tape recording, June 16 2005, International Center for Transitional Justice, New York, NY.

⁶⁰ Priscilla B. Hayner, “Past Truths, Present Dangers: The Role of Official Truth Seeking in Conflict Resolution and Prevention,” in Paul C. Stern and Daniel Druckman (eds.) *International Conflict Resolution After the Cold War*, Commission on Behavioral and Social Sciences and Education, National Research Council (Washington, D.C. National Academy Press, 2000, p. 361.

⁶¹ M. Cherif Bassiouni, “Searching for Peace and Achieving Justice: The Need for Accountability,” *Law and Contemporary Problems*, Vol. 59, No. 4, pp. 9-28. Quote p.23.

produce and legitimize a single historical narrative, which can defuse tensions and may help prevent the return of violence. An example for this logic is the Bosnian Truth Commissions, which one of its primary stated goals is to commonize the three different historical narratives of the three ethnic groups that were involved in the conflict.⁶² A final argument is that the report of a truth commission may facilitate reforms of state institutions in a way that provides nonviolent channels of representation for the groups that were previously disenfranchised.⁶³

All in all, these arguments draw on some of the different justifications for truth commissions in a transitional context and apply them to a conflict resolution context. This application represents a broadening of the goals of the truth-seeking process. While early truth commissions were designed for revealing the “hidden truth” of state repression, the current framework emphasize also “contested truth” and find truth commissions to be appropriate for a wider range of settings and contexts. In practice, there are several recent examples that demonstrate the emphasis on reconciliation and the incorporation of truth-seeking into the tradeoffs in peace negotiations, including: the Sierra Leone Truth and Reconciliation Commission (2000); the Burundi Truth and Reconciliation Commission (negotiated in 2000 and established in 2005); the Truth and Reconciliation Commission in the Democratic Republic of Congo (negotiated in 2002

⁶² Neil J. Kritz, “Where We are and How We Got Here: An Overview of Development in the Search for Justice and Reconciliation,” in Alice A. Henkin, *The Legacy of Abuse: Confronting the Past, Facing the Future*, Washington DC: The Aspen Institute, 2003, pp. 21-45. p. 37.

⁶³ Priscilla B. Hayner, “Past Truths, Present Dangers: The Role of Official Truth Seeking in Conflict Resolution and Prevention,” in Paul C. Stern and Daniel Druckman (eds.) *International Conflict Resolution After the Cold War*, Commission on Behavioral and Social Sciences and Education, National Research Council (Washington, D.C. National Academy Press, 2000, p. 361.

Counter to this logic, Aryeh Neier argues that trials are better at defusing social tensions and have greater potential to foster reconciliation. Trials individualize guilt and responsibility. Thereby they demonstrate that it is not the whole group that should be blamed for violence. Accordingly, trials are better at braking the cycle of blames and diffusing the group animosity that underlined the conflict. Aryeh Neier, “Rethinking Truth, Justice, and Guilt after Bosnia and Rwanda,” in Clara Hesse and Robert Post (eds.), *Human Rights in Political Transitions: Gettysburg to Bosnia* (New York, NY: Zone, 1999). Pp. 39-?

and established in 2006); and the Liberian Truth and Reconciliation Commissions (2004).⁶⁴

The Consolidation of the Epistemic Community

As should be apparent by now, the truth v. justice debate was an academic and intellectual exchange and discussions among people who shared more than they differed. This exchange embodied the consolidation of the truth-seeking epistemic community. In this section, I identify the growing membership and ongoing pattern of activity of this epistemic community as well as the motivations and principle causal beliefs shared by its members.⁶⁵

Membership and Pattern of Activity

The cadre that shaped the South African TRC – Alex Boriane, Jose Zalaquett, Charles Villa-Vicencio, Justice Richard J. Goldstone, and Pricilla Hayner – continued to be in the intellectual forefront of the truth-seeking advocacy during the truth v. justice debate. Joining them was a new circle of academics and professionals, including but not limited to the contributors to the edited volumes *Truth V. Justice, Looking Back Reaching Forward, Burying the Past*, and numerous journal articles. The field of transitional justice that was dominated by legal and human rights scholars and practitioners drew during the truth v. justice debate the engagement of philosophers, political scientists, anthropologist, historians, theologians, and psychologists.

⁶⁴ Both in theory and practice, truth-seeking processes and their associated consequences are not limited to intra-state conflict. One international example is the joint Friendship Commission of East Timor and Indonesia (2004). By the same logic, there is also a proposal to incorporate a truth-seeking process into the Israeli-Palestinian peace negotiations. “Reconciliation and Transitional Justice for Israel and Palestine,” Unpublished private memo. Copy with the Author.

⁶⁵ At this point I do not analyze the community’s pattern of influence. This point is demonstrated in the following chapter.

Still, the important additions to the core of leading experts, whose books have become the most-cited “classics” in the field of transitional justice, were leading legal scholars. Ruti G. Teitel, for example, is a New York Law School Professor of International Law. Teitel has been credited with coining the term transitional justice, and her 2000 book by the same title was described as “the most wide-ranging and complete work on transitional justice by a single author to date.”⁶⁶ Martha Minow is a Harvard Law School Professor, whose 1998 book *Between Vengeance and Forgiveness*, provided for many the analytical framework for evaluating the unique merits of truth commissions for healing and reconciliation. The membership of these legal professionals in the core of the truth-seeking epistemic community is significant since it adds “expert” credibility to the arguments that place the truth-seeking process on equal grounds with prosecutions. Both Minow and Teitel noted in interviews that their legal backgrounds and expertise had made them especially aware of the limits of the judicial approach and motivated their interest in truth commissions.⁶⁷

In interviews, leading community members mentioned two motivations that account for their focus on the truth-seeking principle: first, a genuine belief that this is an important and good cause; second, academic interest and development, that is, scholarly curiosity in the theoretical questions raised by the practice of truth commissions.⁶⁸

⁶⁶ Andrew Vallis, “Between Past and Future: Recent Work on Transitional Justice, Book Review, *Trames*, 2000, 4 (54/49), 394-411.

⁶⁷ Martha Minow, interview by the author, tape recording, May 26 2005, Harvard Law School, Cambridge, MA; Ruti Teitel, interview by the author, tape recording, April 6 2005, New York School of Law, New York, NY. The very same point was raised by Justice Richard Goldstone when I interviewed him. Justice Richard Goldstone, interview by the author, tape recording, May 5 2005, Harvard Law School, Cambridge, MA;

⁶⁸ One could argue that, especially for those previously engaged in the South Africa TRC, the advancement of the truth-seeking principle is a path for “job perpetuation.” Dorothy Shea, *The South African Truth Commission: The Politics of Reconciliation*, Washington DC: United States Institute of Peace, 2000. p. 29. This motivation also came up in the interview with Justice Goldstone who considered it plausible.

Another theme that repeatedly came up in interviews and which is also evident in the writings of community members is the memory of the Holocaust. Minow, for example, notes that the German experience and the universal collective memory of WWII has shaped her view on the role of memory and historical truths in making justice.⁶⁹

The pattern of activity has become more frequent as members of truth-seeking epistemic community continue to engage in the growing “industry” of conferences, which facilitated the intellectual and professional exchange. Collegial and personal friendships also continue to be an important factor connecting community members. For the most part, those who participated in the truth v. justice debate are no more than “three degrees of separation” from one another. They worked with each other in the past; they write the *Forwards* to each others’ books and receive personal acknowledgments in these books; and, they meet in conferences and stay in each others’ homes.⁷⁰

Within the emerging Transitional Justice field of study there is a growing academization of the activity of the truth-seeking epistemic community. Many of the practitioners become semi-academics who write and publish numerous scholarly and policy articles and books.⁷¹ In particular, the publication of policy-oriented manuals,

However, he noted that this is unlikely to be a dominant motivation. The leading members of the truth-seeking epistemic community already have had an impressive career record and they have very little need to artificially perpetuate any job or status.

⁶⁹ Minow, Interview. Also the same point by Tietle and Goldstone. Boraine

⁷⁰ Minow, Interview. Rotberg interview; Hayenr interview.

⁷¹ Ruti G Teitel, “interview by the author, tape recording,” (New York School of Law, New York, NY). Thomas Forsberd, “The Philosophy and Practice of Dealing with the Past: Some Conceptual and Normative Issues,” in Neil Biggar, *Burying the Past: Making Peace and Doing Justice After Civil Conflict*, Washington D.C. Georgetown University Press, 2001; Chandra Lekha Sriram, “Transitional Justice Comes of Age: Enduring Lessons and Challenges,” *Issues in Legal Scholarship*, Richard Buxbaum and German Reintegration, Article 14, 2006. The Berkeley Electronic Press.

John Torpey, with a degree of irony, terms this academic publication industry – Transitology. John Torpey, *Politics and the Past: On Repairing Historical Injustices* (Lenham Md: Rowman and Littlefield, 2003).

which define what truth commissions are and how to make them, continued being widespread.⁷²

Causal Logic, Arguments, and Framing

Notwithstanding the great variation among members of the epistemic community, they share several key beliefs: first, ambivalence about the practicality of prosecutions for wide-scope human rights violations; second, the idea that in transition the main need is not for justice per-se, but rather for rebuilding society and building a peaceful future;⁷³ third, the justice is “practical, contextual ... [and] always a compromise,”⁷⁴ and does not conform to the ideal of universal legalism; fourth, “the public and official exposure of the truth is itself a form of justice.”⁷⁵ Finally, members of the truth-seeking epistemic community share an epistemological consensus that causal logics can best frame and evaluate the relationship between the truth-seeking process and its many potential outcomes.

This epistemological consensus underlines the way in which members of the truth-seeking epistemic community frame their arguments. That is, the focus on the three rationales – psychological, practical-political, and legal-normative – and on the evaluation of the performance of truth commissions relative to trials in each of these

⁷² Most prolific in this area is Priscilla Hayner, who wrote or co-authored at least dozen policy-oriented manuals. For example, Priscilla B. Hayner, “International Guidelines for the Creation and Operation of Truth Commissions: A Preliminary Proposal,” *Law and Contemporary Problems*, Vol. 59, No. 4, 1997, pp. 173-180. Marl Freeman and Priscilla B. Hayner, “Truth-Telling,” in David Bloomfield, Teresa Barnes and Luc Huyse (eds.) *Reconciliation After Violent Conflict*, International Institute for Democracy and Electoral Assistance, 2003, pp. 122-139; Jason S. Abrams and Priscilla Hayner, “Documenting, Acknowledging and Publicizing the Truth,” in M. Cherif Bassiouni (ed.), *Post-Conflict Justice*, Ardsley, NY: Transnational Publishers, Inc. 2002. pp. 283-293.

⁷³ Alex Boraine, *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission* (Oxford University Press, New York, 2000. P. 6.

⁷⁴ Teitel, p.9.

⁷⁵ Richard J. Goldstone, “Justice as a Tool for Peacemaking: Truth Commissions and International Criminal Tribunals,” *New York University Journal of International Law and Politics*, Vol. 28, 1996, pp. 485-503.

domains. This framing is appreciably repeated by all of the leading contributors to the truth-seeking debate who fashion sections of their published work in this way.⁷⁶ The psychological, practical-political, and legal-normative goals are all framed in terms of “needs” which stem from the state’s repressive past. Truth commissions are depicted the tool most suitable for addressing and alleviating these “needs.” Accordingly, members of the truth-seeking epistemic community establish truth commission as the new problem-solving prescription while providing the normative and practical justifications for this policy choice.

Debates outside the Truth v. Justice Consensus

The content of the truth-seeking principle was shaped not only by emerging consensus but also by the criticism this consensus attracted. Significant opposition came from human rights activists and scholars, who argued that human rights violations necessitate a retributive approach and particularly trials. This vocal opposition has led to a dialogue and to the view that truth commissions complement rather than replace trials. The second type of criticism marks the boundaries of the consensus. This criticism came from various observers and scholars that challenged some of the key assumptions that framed the truth-seeking principle.

Legal Criticism from Human Rights Activists

In a well-known 1991 article, Law Professor Diane Orentlicher argued for the “duty to prosecute” in crimes against humanity. Orentlicher argued that the Nuremberg

⁷⁶ Boraine dedicates chapter eight in his book for the discussion of relative merits; Justice Goldstone frame the forward to Villa-Vicencio and Verwoerd’s book this way (pp. viii-xiii.); Hayner also dedicates a chapter in her book; Minow constructs her all argument in this way.

trials established a “strong” precedent of the principle of individual accountability and that this principle has been reinforced by both the Geneva Convention and the Genocide and Torture conventions. Therefore, there is a “strong” legal duty, both for states and for the international community to prosecute in cases human rights violations.⁷⁷ Many legal and human rights activist reaffirmed and endorsed this duty, especially in the context of the public and academic discussions over the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC).⁷⁸

During and following the South African TRC there was a public outcry from many human rights activities and legal scholars over the TRC’s amnesty process, which expressed the concern that this model will spread internationally.⁷⁹ As noted by Reed Brody, an International Human Rights Activist:

[it] seems that because of South Africa, the international community has become blindly besotted with truth commissions, regardless of how they are established and whether they are seen as precursors or complement to justice or, very often now, as substitutes for justice.

Brody goes on to argue that “truth commissions can also divert international attention and scarce resources from justice effort,” and that advocates of truth commissions, like Pricilla Hayner, for example, “too easily brushes off the charge that there is no trade-off between truth and justice.”⁸⁰ Aryeh Neier, the President of the Open

⁷⁷ Diane Orentlicher, “Settling Account: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *Yale Law Journal*, 100, 1991, pp. 1537-2615.

⁷⁸ Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*, Princeton University Press, 2002.

⁷⁹ Helena Cobban, “The Legacies of Collective Violence: The Rwandan genocide and the limits of law,” *Boston Review*, April/May 2002.

⁸⁰ Reed Brody, “Justice: The First Casualty of Truth? *The Nation*, April 30, 2001, pp.25-32 (27-28)

Society Institute, also warns that “efforts to promote truth commissions have become a way of avoiding efforts to do justice.”⁸¹

During the truth v. justice debate, in which the South African experience was framed into general claims with alleged universal applicability, this strand of criticism increased noticeably. The most vocal supporters for the prosecutorial model were Human Rights activists and mainly the main human rights organizations such as Amnesty International and Human Rights Watch.⁸² In many cases, members of these organizations have been working in tough countries and situations and often feel that these situations that they have been witnessing deserve nothing less than “full and perfect justice.”⁸³ Kenneth Roth, the Executive Director of Human Rights Watch, and Alison DesForges, a Senior Advisor to Human Rights Watch, argue that “at times of atrocities [...] a policy of trial and punishment is essential.” They dismiss the restorative approach as a “therapeutic dodge” and a “sick-man’s excuse to responsibility.”⁸⁴

Activists were particularly adamant about cases of gross human rights violations, such as genocides. “Truth-telling, however complete, simply does not adequately address the gravity of many crimes.”⁸⁵ And as Aryeh Neier has argued, “the results of truth process would not have been commensurate to the criminality that took place in Rwanda or Bosnia.”⁸⁶ In Rwanda, for example, Amnesty International officially objected to

⁸¹ Cited in Jonathan D. Tepperman, “Truth and Consequences,” *Foreign Affairs*, Vol. 81, No. 2, March/April 2002, p. 128.

⁸² Jonathan D. Tepperman, “Truth and Consequences,” *Foreign Affairs*, Vol. 81, No. 2, March/April 2002, p. 128.

⁸³ Boraine, Interview.

⁸⁴ Kenneth Roth and Alison DeForges, “Justice or Therapy?” *Boston Review* June/July 2002.

⁸⁵ Reed Brody, “Justice: The First Casualty of Truth?” *The Nation*, April 30, 2001, pp.25-32 (31)

⁸⁶ Madelines H. Morris, Forward to Special issue on Accountability for International Crime and Serious Violations of Fundamental Human Rights, *Law and Contemporary Problems*, Vol. 59, No. 4, Autumn 1996, pp. 1-4. Also, M. Cherif Bassiouni, “Searching for Peace and Achieving Justice: The Need for Accountability,” *Law and Contemporary Problems*, Vol. 59, No. 4, Autumn 1996, pp. 9-28. In page 20 he

proposals for the *gacaca* community courts, even as a complement to the ICTR, since they “do not conform to basic international standards of fair trial.”⁸⁷ Similar objection was also stated in 2001 with regard to the Sierra Leone Truth and Reconciliation Commission.⁸⁸

This growing opposition to truth commissions is in effect an indication to the viability of the alternative they represented. In the mid-80s, when the truth commissions in Argentina and Chile were introduced as a weaker compromising alternative to trials, some human rights activists advanced this option as the lesser of two evils (the other “evil” being the “doing nothing” approach). In the post-South Africa discourse, however, truth commissions were no longer the “weaker” option. The framing of truth commissions on equal grounds with trials, both in terms of practicality and morality, explains the renewed opposition by human rights activists. For these activists, this framing was in stark contradiction with the principle of individual accountability as the only means for genuine justice. By and large, this opposition has proved not to be divisive. Instead, it led to a discourse of complementarity, which reinforced even further the status of truth-commission as a viable and distinct option for transitional and post-conflict settings.

Complementarity

Even in the case of genocide or ‘ethnic cleansing’, where punishment is necessitated by the very nature of the crimes committed, there ought to be scope for additional strategies so we do not rely only on trials and tribunals. Certainly we must take very seriously the gravity and extent of violations, and

writes: “Truth Commissions, however, should not be deemed a substitute for prosecution for the four *jus cogens* crimes of genocide, crimes against humanity, war crimes, and torture.”

⁸⁷ Quoted in Helena Cobban, “The Legacies of Collective Violence: The Rwandan genocide and the limits of law,” *Boston Review*, April/May 2002.

⁸⁸ Cited in William A. Schabas, “The Relationship Between Truth Commissions and International Courts: The Case of Sierra Leone,” *Human Rights Quarterly*, Vol. 25, No. 4, November, 2003, pp 1035; f.n. 12.

accountability is demanded. But that is not the last word Trials on their own will not bring about resorted society, and the possibility of a truth and reconciliation commission should not be ruled out.⁸⁹

Following the truth v. justice debate and the renewed opposition it attracted, many transitional justice scholars and practitioners noted the “fallacy of the dichotomy of truth versus justice.”⁹⁰ Since truth and justice are morally equal and since truth commissions and trials effectively fulfill multiple different goals, then the new consensus that emerged is that both truth commissions and trials are necessary components of transitional justice. The current focus among scholars and practitioners is not on whether to have truth a commission or trials but on how to combine and sequence them while adapting to local conditions.⁹¹

One of the key developments that facilitated the complementarity consensus was the establishment of International Criminal Court (ICC) and its implications on the efficacy of amnesty. The blanket amnesty of the early truth commissions and the conditional amnesty of the South African TRC were the main target for many justice-based critiques, which cited the principle against impunity.⁹² Entering into force in 1 July 2002, the ICC created the option of challenging at the international level any amnesty

⁸⁹ Alex Boraine, *A Country Unmasked*, Oxford University Press, 2000. p.296.

⁹⁰ Ellen Lutz, “Transitional Justice: Lessons learned and the road ahead,” in Roht Ariazza and Javier Mariezcurrena, *Transitional justice in the Twenty-First Century: Beyond Truth versus Justice*, Cambridge University Press, 2006. pp. 325-341. p. p. 325.

⁹¹ Naomi Roht-Arriaza, “The New Landscape of Transitional Justice,” in Roht-Ariazza and Javier Mariezcurrena, *Transitional justice in the Twenty-First Century: Beyond Truth versus Justice*, Cambridge University Press, 2006. pp 1-16. Roht-Ariazza expressed these argument earlier then in this book, see Naomi Roht-Arriaza, “A Second Generation of Initiatives around Truth and Justice After Massive Violations of Human Rights,” Paper presented at the conference Settling Accounts? Truth, Justice and Redress in Post-Conflict Societies, Weatherhead Center for International Affairs, Harvard University, November 2-3, 2004. See also, Laurel E. Fletcher and Harvey M. Weinstein, “Violence and Social Repair: Rethinking and Contribution of Justice to Reconciliation, *Human Rights Quarterly*, Vol. 24, 2002, pp. 273-639. “Rule-of-Law Tools for Post-Conflict States: Truth Commissions,” Office of United Nations High Commissioner for Human Rights, 2006. HR/PUB/06/1 P.5

⁹² Charles Villa-Vicencio and Erik Doxtader, *The Provocations of Amnesty: Memory, Justice, and Impunity*, Claremont, South Africa, Institute for Justice and Reconciliation 2003.

decision that is decided at the national level. Consequently, this development de-facto eliminated the nexus between negotiating a truth-seeking commission and amnesty, and disconnected the truth-seeking process from the criminal-judicial process.

As the argument goes, if truth-seeking commissions and trials are distinct mechanisms with a distinct set of goals than, instead of being in conflict or competition, they each do their share of “dealing with the past.”⁹³ In more recent transitional justice literature, for example, arguments for trials focus on justice and retribution while reconciliation may appear only as a distant goal for trials. By the same token, the arguments that truth commissions aim to punish or deter future abuses almost disappeared completely and there is a focus on the distinct qualities of the truth-seeking process. Notably, the complementarity principle does not merely reflect a division of labor, with trials for high-level perpetrators while truth commissions are for and low-level offender. Instead, the complementarity principle accepts the distinct political and moral rationales of the truth-seeking process.⁹⁴

The outcome in Sierra Leone is a good example for the emerging complementarity consensus in practice. The truth and reconciliation commission was part of the negotiated peace agreement between the government of Sierra Leone and the Revolutionary United Front of Sierra Leone. (The Lome Agreement, 7 July, 1999). The truth commission initiative met with criticism from many legal experts, and when in 2002 the United Nations established along with the Government of Sierra Leone the Special Court for Sierra Leone it was assumed by some that the truth commission “second-best

⁹³ In 2000, the United States Institute of Peace held a round table discussion on the relationship between truth commissions and trials.

⁹⁴ Darryl Robinson, “Serving the Interest of Justice: Amnesties, Truth Commissions and the International Criminal Court.” *European Journal of International Law*, Vol. 14, 2003, pp. 481-505.

alternative” was no longer needed. However, the decision was to have both the truth and reconciliation commission and trials. This decision reaffirmed the division of goals between the two. While the Special Court emphasized justice through punishment, the mandate of the truth and reconciliation commission was to promote reconciliation and healing a-la South Africa.⁹⁵ As Joseph C. Humper, the Chair of the Commission noted, the Special Court and the TRC are “going to the promised land, but by different roads.”⁹⁶ Notably, the truth and reconciliation commission was not a “second fiddle.” There was a public and conscious decision of the United Nations’ Office of Legal Affairs that neither of these institutions will receive primacy. Moreover, in order to bolster the powers of the truth and reconciliation commissions, the mandate adopted only a restrictive approach with regard to the Commission’s responsibility to share information with the courts.⁹⁷

In addition to the parallel operation of truth commissions and trials like in Sierra Leone, the complementarity principle also implies that truth commissions may come first and that their mandate will include the goal of recommending when and who should be persecuted. The mandate of the Peruvian Truth and Reconciliation Commission (2001), for example, included this specific close, and the report (August 28 2003) indeed completed this task.⁹⁸ Similarly, the Commission for Reception, Truth, and Reconciliation in East Timor (2001), also had the discretion to recommend the prosecution of those associated with serious crimes, such as murder and rape, while direct

⁹⁵ The South African model played a great role in the design of the Sierra Leone TRC. Its mandate adopted largely the idea of reconciliation in the sense of repentance. Inspired by the images of Archbishop Desmond Tutu, it even appointed the Bishop Joseph Humper, the President of the Inter-Religious Council, as its Chairmen.

⁹⁶ Cited in William A. Schabas, “The Relationship Between Truth Commissions and International Courts: The Case of Sierra Leone,” *Human Rights Quarterly*, Vol. 25, No. 4, November, 2003, pp 1035-?

⁹⁷ Neil J. Kritz, “Progress and Humility: The Ongoing Search for Post-Conflict Justice, in M. Cherif Bassiouni (ed.), *Post-Conflict Justice*, Ardsley, NY: Transnational Publishers, Inc. 2002. p. 69.

⁹⁸ “Peru – Prosecutions Should Follow Truth Commission Report,” *Human Rights News*, August 28, 2003. Human Rights Watch website <http://hrw.org/english/docs/2003/08/28/peru6334.htm>

others to a “community reconciliation” process which entails some form of local community service.

All in all, the complementarity consensus further strengthens the truth-seeking principle and making truth-seeking commissions into a permanent feature of transitional justice mechanisms. In the first place, it reaffirms the distinctiveness of truth-seeking commissions. Secondly, it expands the scope of cases by reaffirming that truth commissions are a viable option in all cases of past repression and/or conflict regardless if trials are needed or not.

Criticism at the Margins – Marking the Boundaries of the Consensus

The truth v. justice debate and even the renewed opposition from human rights activists never really challenged the causal logic between truth and healing or reconciliation. It also did not challenge the framing of the truth-seeking process as a domestic national affair, and, most significantly, it did not really engage in the question of the impossibility of an objective truth. Nevertheless, criticism along these arguments was expressed. In order to provide a complete account of the truth-seeking discourse, this last section presents these critiques as a way to mark the boundaries of the consensus.

The first criticism is on the therapeutic model. It rejects the assumptions that nations have a collective psyche or identity and experience traumas in a similar way to individuals, hence can be healed. Some critics address the factual basis of the nexus between truth and healing and argue that there is no evidence from South Africa that truth-telling has any cathartic effect.⁹⁹ Others referred to the therapeutic discourse of truth

⁹⁹ Michael Ignatieff, “Articles of Faith,” *Index on Censorship*, Vol. 5 1996, 110-122; cited in Fiona C. Ross, “On Having voice and Being Heard: some after-effects of testifying before the South African Truth and Reconciliation Commission,” *Anthropological Theory*, Vol. 3, no. 3 325-341 2003. Brandon Hamber

commissions as a tool for “manufactured legitimacy” which is “overlaid ... with a morally thick project of national reconciliation in order to legitimize and tarnished state institutions.”¹⁰⁰

The second criticism is about the framing of the goals as well as of the mandate of truth commissions as a domestic national affair. Truth commissions commonly investigate the role of domestic groups and national institutions in the repression and violence.¹⁰¹ Framing the investigation as a national affair result that international actors, including other states, international organizations, and privates companies, do not come under scrutiny and there is no account for how these international actors cooperated with and supported some of the regimes who violated human rights.¹⁰² The investigative mandate of the Guatemalan Historical Clarification Commissions, for example, began in 1962. Consequently, it focused on guerilla insurgents, leaving out the 1954 CIA-organized military coup and largely ignored its historical role and legacy.¹⁰³ These omissions, some argue, is a powerful ideological narrative. It perpetuates the image of a

and Richard A. Wilson, “Symbolic closure through memory, reparation and revenge in post-conflict societies,” *Journal of Human Rights*, Vol. 1, No, 1, March 2002. pp. 35-53.

Another article by Brandon Hamber with a similar argument actually appears in the *Burying the Past* volume. Yet, his criticism there is more nuanced. He does not undermine the relationship between truth and healing entirely but rather call for an “unexaggerated interpretation.” Brandon Hamber, “Does the Truth Heal? A Psychological Perspective on Political Strategies for Dealing with Legacy of Political Violence,” in Nigel Biggar (ed), *Burying the Past: Making Peace and Doing Justice After Civil Conflict*, Washington D.C., Georgetown University Press, 2003, pp. 155-174.

¹⁰⁰ Richard Ashby Wilson. “Anthropological studies of national reconciliation processes,” *Anthropological Theory*, 2003, Vol 3, pp. 367-387. P. 369

¹⁰¹ The one exception is the Commission of Inquiry into the Crimes and Misappropriations that operated in Chad. The commission’s report pointed out U.S. involvement in Chad and its aid to the repressive regime of President Hussein Habre.

¹⁰² Bill Rolston, “Why Truth”? Why Now? *Race & Class*, Vol. 44, No.1, v-vi, 2002.

¹⁰³ Audrey R. Chapman and Patrick Ball, “The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala,” *Human Rights Quarterly*, Vol. 23, 2001, pp. 1-43. (p.13).

“civilized West” untouched by human rights violations and repression while the less developed world “must” overcome the demons from its past.¹⁰⁴

The final strand of criticism focuses on the possibility, or rather the impossibility of truth. Even though the report of the South African TRC sought to present a somewhat complex conceptualization of truth,¹⁰⁵ the truth-seeking discourse in general overlooked questions about the possibility of truth. Notably, the truth-seeking discourse has been developing in an intellectual context where the whole idea of an objective historical truth has long been challenged by known intellectuals such as Nietzsche and Foucault and their followers.¹⁰⁶ However, many of the advocates of truth-seeking commissions are policy-oriented and practical people with little patience for relativistic ideas. For the most part, they accepted the assumption that an objective historical truth is possible and that it has profound personal, political, and social implications.¹⁰⁷

Beyond postmodernism, critics point out that establishing the truth on historical and complex social events is difficult. Some barriers to the truth include, for example, evidentiary limitations due to the availability of files and information, subjective memory of victims and family member, and a selection bias in the cases presented before the

¹⁰⁴ Bill Rolston, “Why Truth”? Why Now? *Race & Class*, Vol. 44, No.1, v-vi, 2002.

¹⁰⁵ TRC report (1999) 110. The report specified four types of truth: First, factual or forensic truth, which uncovers evidence and facts about events and their context; second, personal-narrative truth, which provides meaning to the documented truth and may lead to reconciliation; third, social or dialogue truth, which captures the interaction in which the truth is being experienced; Finally, healing-restorative truth, which includes acknowledgment so that human dignity is restored. For a discussion on these four types of truths see, Alex Boraine, *A Country Unmasked*, Oxford University Press, 2000, p. 288-291; Johnny de Lange, “The Historical Context, Legal Origins and Philosophical Foundation of the South African Truth and Reconciliation Commission,” in Charles Villa Vicencio and Wilhelm Verwoerd eds. *Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, Cape Town: University of Cape Town Press, 1999. pp.

¹⁰⁶ Nelson-Maldonado-Torres, “Reconciliation as a Contested Future: Decolonization as Project or Beyond the Paradigm of War,” in Iain S. Maclean, *Reconciliation, Nations and Churches in Latin America* Burlington VT: Ashgate, 2006. pp. 225-245. quote 226.

¹⁰⁷ Elazar Barkan, “Negotiating Histories: Towards Reconciliation?” Paper presented at the conference *Settling Accounts? Truth, Justice and Redress in Post-Conflict Societies*, Weatherhead Center for International Affairs, Harvard University, November 2-3, 2004.

commissions.¹⁰⁸ As one critic notes, the idea of an objective truth “masks the fact that any truth narrative is subjective and will always exclude and silence voices within the nation,” which casts shadow over the possibility of genuine reconciliation.¹⁰⁹

In general, these critiques share two main arguments. First, they charge the discourse that followed the South African TRC with oversimplification, specifically in its quest for universal rationales for the truth-seeking principle.¹¹⁰ Second, they uncover the ideological and political implications that are embedded in this discourse. In theory, therefore, these critiques undermine the generalizability and morality of truth-seeking commissions. In practice, however, these critiques remained in the margins of the truth-seeking discourse and mark the boundaries of the consensus. While these critiques were not deliberately silenced, they were excluded, sometimes explicitly, from the debate over truth commissions.¹¹¹ Many of the scholars who voiced these arguments came from cultural studies and anthropology. Often, these scholarly works appeared in different academic journal and publications, which may further explain their marginalization. They used methods such as discourse analysis and ethnography and presented arguments that

¹⁰⁸ Deborah Posel and Graeme Simpson, *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission*, Johannesburg, South Africa: Witwatersrand University Press, 2002.

On the issue of selection bias, Chapman and Ball demonstrate that in the South African TRC whites South Africans were overly represented in the public hearings. Chapman and Ball argue that while this case selection served the narrative that Apartheid victimized the South African society as a whole, it greatly underrepresented reality. Audrey R. Chapman and Patrick Ball, “The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala,” *Human Rights Quarterly*, Vol. 23, 2001, pp. 1-43. p. 39.

¹⁰⁹ Rosemary Nagy, “Reconciliation in Post-Commission South Africa: Thick and Thin Accounts of Solidarity,” *Canadian Journal of Political Science*, Vol. 35, No. 2, June 2002, pp. 323-346.

¹¹⁰ Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War*, Cambridge, UK: Polity, 2002.

¹¹¹ In the introduction to their edited volume Villa-Vicencio and Verwoerd note they choose not to include “the voices of those who reject the Commission in principle,” and instead focus on “internal critique and reflection.” Charles Villa-Vicencio and Wilhelm Verwoerd, “Introduction,” in Charles Villa-Vicencio and Wilhelm Verwoerd, *Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, University of Cape Town Press, 2000, p. xiv.

were often more complex and less accessible than the straightforward causal logics that framed the rationales for the truth-seeking process.

Concluding Discussion

Following the South African TRC the truth-seeking principle emerged as an international norm. Truth-seeking commissions are deemed universally applicable. They supposedly achieve multiple and important goals, and have been solidified as a permanent and desired mechanism for transitional and post-conflict settings. In accordance with the propositions of my model, the changes in the “logic of appropriateness” of truth-seeking commissions, which were framed by the truth-seeking epistemic community, account for this norm’s emergence.

In the first place, the truth v. justice debate broadened the range of goals that are expected to be attained by the truth-seeking process. The rationale for early truth commissions was mostly practical-political; namely, that they are a feasible tool for the new regime to “break away from the past” and to establish its stability, legitimacy, and accountability. In the new framing, truth commissions have broader democratizing effects, and they are also supported by the psychological and legal-moral rationales.

Second, the truth v. justice debate also effectively distinguished truth commissions from trials. The framing of the relative merits of the truth-seeking process shifted from emphasizing what truth commissions can achieve as well as trials to emphasizing what truth commissions can achieve differently and even better than trials. Truth commissions came to occupy a separate “niche” in the set of mechanisms for dealing with the past. Furthermore, the renewed opposition from human rights activists and the resulting consensus about the complementarity of truth commissions and trial

further solidified the notion that these two options are different yet equal. Third, the notion that truth commissions are morally equal to trials and specifically the framing of the truth seeking process as a form of justice elevated the normative standing of truth commissions. Truth commissions are no longer a quasi-legal alternative leading to a weaker form of justice. Instead, the truth-seeking process embodies a different conception of justice, that is, restorative justice.

Combined, these changes in the “logic of appropriateness” of truth-seeking commissions make them congruent with more settings, contexts, and states. This outcome is demonstrated in the application of the truth-seeking principle to negotiating and resolving intra and inter-state conflicts as well as the application of truth commissions in cases of gross human rights violations, including genocide, for which they deemed inappropriate in the past.

The debates over the goals and merits of truth commissions consolidated the contacts and the activity of the truth-seeking epistemic community. While the principle of “dealing with the past” has been advanced by a wider transitional justice advocacy network, the truth-seeking epistemic community is a smaller group, in which specific individuals have had a critical role in framing and advancing the truth-seeking principle. Members of the epistemic community have come to be considered professional and scholarly experts. Their framing redefined what states should expect to achieve by having a truth-seeking commission and their arguments have made this policy-choice more persuasive. At the same time they account for the international diffusion of this policy-choice via collegial relations, conferences, and other methods of information exchange.

The main alternative proposition for the argument presented here is that changes in the “logic of appropriateness” are merely an indication for the rational adaptation of truth commissions to various contexts. Rational adaptation to local conditions is undeniably part of the process. Since the early truth commissions in the mid-1980s designers of subsequent truth commissions learned and refined on previous experiences. At the same time, members of the truth-seeking epistemic community repeatedly emphasize that each truth commission has to be tailored and adapted to its specific context. For the most part, however, the changes identified here reflect a general cumulative trend. These changes accrue across time and do not randomly vary by cases.

Timing also plays an important role in supporting my proposition over the rational adaptation proposition. The change in discourse precedes the growing adoption of truth commissions. As previous chapters demonstrate, the dynamic of content change can be traced to South African TRC, which initiated the changes in the discourse about the goals of truth-seeking commissions. Indeed, the growing pace of the worldwide proliferation of truth commissions can also be traced to the South African TRC.¹¹² Moreover, in the design process and the mandate of subsequent truth commissions there are commonly direct references to the South African precedent as well as to the new framing it initiated. Beyond the demonstrative effect of the South African TRC, it took some time for the new “logic of appropriateness” to take over. The truth commissions in Guatemala (1994), Burundi (1995), Ecuador (1996), and Nigeria (1999), which took shape during the operation of the South African TRC, included no reconciliation clause nor attempted to incorporate any of the other unique features of the TRC. In fact, they shared more with the Latin American commissions both in their framing and design. From 2000 onward,

¹¹² See graph X in chapter 3 of this dissertation.

however, we find no cases like these and all truth commissions reflect in their goals and design the new “logic of appropriateness.”

Norm Emergence in Context: The TRC in Bosnia and Herzegovina

The Truth and Reconciliation Commission for Bosnia and Herzegovina (2005/6) provides a compelling illustration of the dynamic of the emergence of the truth-seeking norm. Initially, when the conflict in the former Yugoslavia ended in the mid-1990s the option of a truth commission was not considered and the International Criminal Tribunal for the Former Yugoslavia (ICTY) was established. This lack of consideration reflects the consensus at the time that cases of massive human rights violations call for prosecution.¹¹³ In 1997, the United States Institute of Peace (USIP) began discussions around establishing a truth commission in Bosnia and Herzegovina.¹¹⁴ This initiative met with fierce opposition from senior officials of the Hague tribunal. [“Top ICTY] officials suggested that even if establishment of the TRC would improve the chances for lasting peace in Bosnia, it would still be opposed because it might complicate the work of the Tribunal.”¹¹⁵ This approach yet still represents the perception that a truth commission is only secondary to trials. For others, like Aryeh Neier, a truth commissions in this case was

¹¹³ Aryeh Neier, *War Crimes: Brutality, Genocide, Terror, and the Struggle for Justice* (New York: Random House, 1998).

¹¹⁴ Mark Freeman, “Bosnia And Herzegovina: Selected Developments in Transitional Justice,” Case Studies Series, International Center for Transitional Justice, October 2004.

¹¹⁵ Neil J. Kritz, “Progress and Humility: The Ongoing Search for Post-Conflict Justice, in M. Cherif Bassiouni (ed.), *Post-Conflict Justice*, Ardsley, NY: Transnational Publishers, Inc. 2002. pp. 55-87. The ICTY Chief Prosecutor, Louise Arbour reportedly stated in 1998 that “such an effort [for a truth commission] would contaminate the evidence.” Hayner, *Unspeakable Truths*, 207. The one exception is Justice Richard Goldstone, the Tribunal first prosecutor, who already in the late 1990s argued that the ICTY and a TRC are compatible and may fulfill different goals.

a “meaningless gesture” since the atrocities were not in dispute and is no truth as such to recover.¹¹⁶

The USIP continued pushing forward the initiative and in 1998 began working more closely with local leaders and NGOs. In 2000, along with the newly established Association of Citizens for Truth and Reconciliation, they developed a revised proposal for a joint Bosniak-Croat-Serb truth and reconciliation commission that alluded to the South African model and emphasized the goals of ethnic reconciliation and establishing a common historical narrative. With these goals in mind, the opposition to the TRC faded away. In a speech delivered in May 2001 in Sarajevo, the former Tribunal President Claude Jorda noted:

I will conclude my remarks by emphasizing the simultaneously *complementary and distinct* roles which the truth and reconciliation commission must play in respect of the International Tribunal. Admittedly, both institutions will be called upon to examine the same facts with the common perspective of contributing to a deep-rooted lasting peace. Unlike the Tribunal, however, which because of its very essence must view the situation from the standpoint of criminal justice, the commission must take up its tasks from the *pedagogical and historical perspective of reconstructing the national identity*.¹¹⁷

The TRC proposal was drafted into legislation several months later and was re-endorsed by local party leaders in 2005. As this example demonstrates, a truth and reconciliation commission became a viable option when it was no longer perceived as an alternative to trials or as an impediment for justice. Local leaders considered and accepted this option when it carried the promise of achieving goals that the ICTY was not designed to achieve, including long-term reconciliation and nation-building. That is to

¹¹⁶ Aryeh Neier, “Rethinking Truth, Justice, and Guilt after Bosnia and Rwanda, in Carla Hesse and Robert Post (eds.), *Human Rights in Political Transitions: Gettysburg to Bosnia*, 1999. p. 42

¹¹⁷ President Claude Jorda, “The ICTY and The Truth And Reconciliation Commission In Bosnia And Herzegovina, Speech Made on 12 May 2001 in Sarajevo. *Italic in original press release.* Available at: <http://Www.Un.Org/Icty/Pressreal/P591-E.Htm>

say that the change in the logic of appropriateness shaped the viability of the TRC option in this case. Moreover, this case demonstrates the critical role of the epistemic community in this process. Specifically, Neil Krtiz, the Director of the USIP Rule of Law Program, who introduced the new framing of the goals of the TRC to local leadership and in effect persuaded them to have one.

Chapter 7

Truth for All: The Cascading of the Truth-Seeking Norm

Twenty years ago you could have a transition and not do anything about the past and no one would really expect it. Where as now, people – and I think it is people nationally as well as internationally – there is the expectation that something is done to deal with the past. Pricilla Hayner, Co-founder, ICTJ.¹

By the early to mid-2000s, truth and reconciliation commissions were a common practice. While the internalization of the norm was far from complete, there was broad international endorsement of the truth-seeking principle. This chapter analyzes the cascading of the truth-seeking norm in early to mid-2000s. At this stage, the ideas, values, and practices associated with the norm attain a “taken for granted” status, which, in turn, generated expectations from and placed constraints on states’ behavior.

The organization of this chapter follows my theory’s two main propositions about the norm cascading stage: the growing institutionalization of the norm; and, the broadening of state’s motivations for adopting the norm. In the first part of the chapter I focus on the institutionalization of the truth-seeking principle at the international level. First, I demonstrate how major international organizations, including leading human rights non-governmental organizations (NGOs) and the United Nations, came to officially endorse the truth-seeking principle and widely recommend the practice of truth and reconciliation commissions. I also show how this development has been further reinforced by the emerging universal right to truth. A second measure for international institutionalization is the institutionalization and professionalization of the transitional justice epistemic community, including the founding and on-going activities of the

¹ Alex Boraine, “interview by the author, tape recording,” (International Center for Transitional Justice, New York, NY).

International Center for Transitional Justice (ICTJ) and the emergence of transitional justice as a distinct field of academic study.

My evidence and analysis of the institutionalization of the truth-seeking norm also challenge demand-driven explanations for the spread of truth commissions. According to these explanations, the international spread of truth commissions is primarily the outcome of local demands for truth and justice; international actors only play a secondary role by responding to these demands. I demonstrate how the ICTJ, specifically, has been spawning domestic demand by introducing the concept and potential merits of the truth-seeking process to places where there has been next to no local knowledge about them.

The second part of this chapter focuses on the domestic level and on states' motivations for establishing a truth commission. I first layout the range of state leaders' potential motivations for establishing a truth commission, including: domestic, international, instrumental, and normative motivations. I then look systematically at the cases of Uruguay and Burundi, where truth commissions were attempted both before and after the norm cascading stage. The other case I analyze is Morocco, where local conditions would not predict the establishment of a truth commissions, yet one was established in 2004. I find that, in addition to domestic motivations, international interest-based motivations indeed shaped leaders' decision to establish the truth commission.

The evidence I present throughout my analysis serves a dual purpose. First, they demonstrate the growing institutionalization of the truth-seeking principle and the broadening of states' motivations. Accordingly, these are measurements that indicate the cascading of the truth-seeking norm. Second, they demonstrate that these two processes – international institutionalization and motivations broadening – are the mechanisms that

facilitate the further cascading of the truth-seeking norm. Moreover, my analysis supports the proposition that the international institutionalization and the domestic-level motivations reinforce each other: the more the norm is institutionalized at the international level the more influential international incentives and constraints become in shaping states' decision to establish truth commissions.

International Institutionalization: Institutional Embeddedness

The first measure for the institutionalization of the truth-seeking principle is the principle's institutional embeddedness, which amounts to the official clarification, endorsement, and recommendation of the truth-seeking principle by leading NGOS and IOs. The basic assumption that underlines the notion of institutional embeddedness is that once principled ideas are embedded within existing organizations they gain the needed official credence and legitimization that facilitates the international spread of these ideas as an international norms. From that point on, the international organizations that adopt the truth-seeking principle become the norm's socialization agents that explicitly or implicitly teach as well as pressure targeted states to adopt the policies associated with the norm, that is, truth commissions.

Specifically, I evaluate whether these organizations have officially endorsed the new "logic of appropriateness" of truth-seeking commissions identified earlier in this dissertation. The materials I analyze include public statements, policy papers and recommendations, funding, and overall participation and sponsorship of truth commissions by leading NGOs and other international organizations.² In addition, I

² Initial support for this proposition was already presented in Chapter 3, Figure 5. In the period after the South African TRC there is growing international participation and sponsorship in truth and reconciliation

analyze more closely the emerging “right to truth” and evaluate its relationship with the norm of truth-seeking and the practice of truth commissions.

The Truth-seeking Principle within NGOs and IOs

Already in the late 1980s, both Human Rights Watch and Amnesty International, the two largest human rights organizations, emphasized in their general policy statements the importance of seeking truthful information.³ However, these organizations were largely critical of truth commissions and viewed the uncovering of information and the search for truth as means for the superior goal of retributive justice.⁴ Gradually, there have been significant changes in this position. The 2004 Human Rights Watch World Report, for example, while critical of the operation of specific truth commissions, praised their principled role as a “necessary alternative to impunity”⁵ and in some cases the NGO has publically initiated a call for a truth commission (e.g., Sierra Leone, Mexico).⁶

Between 1990 and 2006 Amnesty International published 59 official reports and press releases that make reference to truth commissions, of which only five were prior to

commissions. In 52% of the post-South African TRC there in international involvement compared with only 28% before. The percentage is even higher (65%) when we include the six truth and reconciliation commissions that are currently in the stage of drafting a mandate.

³ For excerpts of the policy statements of both Human Rights Watch (December, 1989) and Amnesty International August 1991), see Neil J Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, 3 vols., vol. 1: General Considerations (Washington, DC.: United States Institute of Peace, 1995), 217 and 219 respectively.

⁴ The early criticism of human rights activists and NGOs is analyzed in Chapter 6, section: “Legal Criticism from Human Rights Activists.”

⁵ Richard Dicker and Elise Keppler, *Beyond The Hague: The Challenges of International Justice, Rights and Armed Conflict*, Human Rights Watch World Report (Human Rights Watch, 2004 accessed July 15 2004); available from http://www.hrw.org/legacy/wr2k4/10.htm#_Toc58744959

⁶ For Human Rights Watch recommendation for a truth commissions in Sierra Leone see *Letter to Mary Robinson, U.N. High Commissioner for Human Rights, June 16*, (Human Rights Watch 1999 accessed July 15 2008); available from <http://www.hrw.org/en/news/1999/06/16/letter-mary-robinson-un-high-commissioner-human-rights>; for Human Rights Watch recommendation for a truth Commission in Mexico see *Mexico: Truth Commission Call - Letter, August 20*, (Human Rights Watch, 2001 accessed July 15 2008); available from <http://www.hrw.org/en/news/2001/08/20/mexico-truth-commission-call-letter>.

2000 and notably no reference to them before 1998.⁷ However, the position of Amnesty International on truth commissions is not merely a matter of the organization beginning to pay attention to them or issuing more documents. A closer reading of these documents reveals a significant change in the NGO's position on truth commissions. While the majority of the documents (38) are neutral, there are seven documents that criticize or outright reject the practice and principles of truth commissions, all of which are between 1998 and 2003.⁸ Since 2002 there are 14 documents that endorse truth commissions as a positive practice and make recommendations for adopting one in specific cases, including Liberia, Iraq, Peru, Somalia, and Burundi.⁹

More recently Amnesty International also published a detailed policy paper that offers guidelines for establishing an effective truth commission. The policy paper asserts that truth commissions are “a foundation for justice [and] for strong and lasting

⁷ Amnesty International's reports and press releases are available at the Amnesty International's electronic library [search term: “truth commission”; 1 January 1999 through 31 December 2006] *Amnesty International Electronic Library* (Amnesty International, accessed July 15 2008); available from <http://www.amnesty.org/en/library>

⁸ I used here a very simple rule of coding. A document was coded “neutral” if the reference to a truth commission is strictly informative and does not include an evaluation of its merits or a policy recommendation. A document was coded “endorsement” if it includes a specific recommendation for a truth commission and/or refers to the unique positive consequences of a truth-seeking process, such as reconciliation and healing. A document was coded “critical” if it emphasizes that a truth commission is a way to evade justice and/or specifically recommends avoiding one.

⁹ For example, Amnesty International's public statement on Burundi reads: “A truth and reconciliation commission could make an important contribution to reconciliation by helping Burundians to understand their history and the reasons underpinning acts of past violence.” *Burundi: Towards What Reconciliation? March 24*, (Amnesty International, 2006 accessed July 15 2008); available from <http://www.amnesty.org/en/library/asset/AFR16/003/2006/en/dom-AFR160032006en.html>.

Also, in a public letter to the President of Peru in July 2003, Amnesty International expressed that “the Truth and Reconciliation Commission can make an important contribution to the transition to democracy and a true reconciliation of Peruvian society, by helping the country to understand its history, providing an official and consensual interpretation of the violations committed during the internal conflict, and clarifying some of the reasons that contributed to the violence.” Quoted in Daan Bronkhorst, *Truth Commissions and Transitional Justice: A Short Guide* (Amnesty International, Netherlands, 2005 accessed July 15 2008); available from www.amnesty.nl/downloads/truthcommission_guide.doc

reconciliation.”¹⁰ It clearly places truth commission as the initial step in any process of accountability. The paper recommends that a truth commission will have a mandate to advise a national government on other mechanisms of transitional justice, such as reparations, and, in some cases, criminal prosecutions.

In general, both Amnesty International and Human Rights Watch still primarily focus their advocacy on retributive justice. Nevertheless, they officially accepted that truth commissions are an important transitional justice mechanism. Moreover, these human rights NGOs have endorsed the unique positive consequences that are attributed to a truth-seeking process, specifically the goal of national reconciliation. They often recommend truth commissions as the suitable mechanism for achieving this goal. In light of their earlier opposition to truth commissions, the endorsement by the leading human rights NGOs provides a strong indication for the institutional embeddedness of the truth-seeking principle.

Another aspect of the truth-seeking principle that has been endorsed by NGOs is the immanent nexus between truth and reconciliation commissions and conflict resolution processes. Already in 1998 the International Institute for Democracy and Electoral assistance (IDEA) in its handbook on ending deep-rooted conflicts, which was also endorsed by the United Nations, advocated for truth commissions alongside crimes tribunals, noting their relative strengths and limitations.¹¹ Five years later, in its 2003 handbook *Reconciliation after Violent Conflict*, IDEA emphasizes truth commissions as a

¹⁰ *Truth, Justice and Reparation: Establishing an Effective Truth Commission*, POL 30/009/2007 (Public), June 11, (Amnesty International 2007 accessed July 15 2008); available from <http://www.amnesty.org/en/library/asset/POL30/009/2007/en/7988f852-d38a-11dd-a329-2f46302a8cc6/pol300092007en.html>.

¹¹ Peter Harris and Ben Reilly, *Democracy and Deep-Rooted Conflict: Options for Negotiators* (Stockholm, Sweden: International Institute for Democracy and Electoral Assistance (IDEA), 1998).

“key ingredient” and one of the “necessary” pillars for resolving conflicts.¹² In this handbook truth and reconciliation commissions gain a more prominent standing. Archbishop (Emeritus) Desmond Tutu who wrote the *Foreword* to the handbook, notes the South African TRC as a model for reconciliation.¹³ In the practical recommendations, the IDEA handbook advocates implementing a truth-seeking process as early as possible in a conflict resolution process and incorporating the truth-seeking process to the negotiations and the peace settlement. The rationale of this recommendation is that the process of truth-seeking establishes good enough relations between individuals and groups in order to foster basic trust, respect and cooperation. This rationale largely echoes the new “logic of appropriateness” for truth-seeking commissions, which stresses the capacity of truth-seeking commissions to remove or at least alleviate the root causes of conflict and facilitate the resolution of conflicts.

Nowhere is the endorsement of the truth-seeking principle more obvious than by the United Nations (UN). This endorsement has been taking place in the context of a boarder reform towards integrating human rights advocacy into all of the UN areas of operation.¹⁴ The reform process was initiated by Secretary-General Kofi Annan, who entered into office in 1997. It identified human rights as one of the core issues of the UN and specifically human rights during and following political transition and accountability for past crimes.¹⁵ This reform was also translated into the UN’s institutional design (e.g., the establishment of a Transitional Justice Unit within the Department of Peace

¹² David Bloomfield, Barnes, Teresa, Huyse, Luc, ed., *Reconciliation After Violent Conflict: A Handbook* (Stockholm, Sweden: International Institute for Democracy and Electoral Assistance (IDEA), 2003).

¹³ Ibid., 14.

¹⁴ Hurst Hannum, "Human Rights in Conflict Resolution: The Role of the Office of the High Commissioner for Human Rights in UN Peacekeeping and Peacebuilding," *Human Rights Quarterly* 28, no. 1 (2006).

¹⁵ Based on numerous interviews with UN officials, Hurst Hannum concludes that “accountability for past abuses is the only human rights issue perceived to be relevant to their work by many UN mediators,” Ibid.: 151.

Keeping)¹⁶ and working procedures (e.g., scheduled presentations of the United Nations High Commissioner for Human Rights (UNHCHR) before the Security Council and the General Assembly.

In recent years, the UN repeatedly endorsed the principles and practice of truth and reconciliation commissions. In addition to making recommendations for truth commissions in specific cases,¹⁷ in 2003 the UNHCHR began developing a “tool kit” for establishing the rule of law. The recommendation and guidelines for truth commissions were developed by Priscilla Hayner and were published in collaboration with the ICTJ and the European Commission in 2006.¹⁸ While the “tool kit” cautions against exaggerated expectations, it embraces the general nexus between truth and reconciliation. It adopts the victim-centric approach and highlights the goal of the truth-seeking process in addressing the psychological needs of victims and their families. The victim-centric approach was also specifically endorsed in a 2005 UNHCHR resolution calling for the participation of victims in truth and reconciliation processes.¹⁹ Also recently, Louise Arbour, then the High Commissioner for Human Rights, even contemplated the idea that truth-seeking commissions could have a greater role in the future by addressing not only

¹⁶ Ruti G Teitel, "Transitional Justice Globalized - Editorial Note," *International Journal of Transitional Justice* 2, no. 1 (2008): 4.

¹⁷ For example, a 2005 UN report recommends a truth commission in Darfur: “A truth and reconciliation commission could play an important role in ensuring justice and accountability... In situations of mass crimes, such as have taken place in Darfur, a relatively limited number of prosecutions, no matter how successful, may not completely satisfy victims’ expectations of acknowledgment of their suffering. What is important, in Sudan, is a full disclosure of the whole range of criminality” *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, 25 January*, (The United Nations, 2005 accessed July 15 2008); available from www.un.org/news/dh/sudan/com_inq_darfur.pdf.

¹⁸ *Rule-of-Law Tools for Post-Conflict States: Truth Commissions, HR/PUB/06/1*, (Office of United Nations High Commissioner for Human Rights, 2006 accessed July 15 2008); available from <http://www.ohchr.org/Documents/Publications/RuleoflawTruthCommissionsen.pdf>.

¹⁹ *Impunity - Human Rights Resolution 2005/81, April 21*, (Office of the High Commissioner for Human Rights, The United Nations, 2005 accessed July 15 2008); available from <http://www.unhcr.org/refworld/category,LEGAL,UNCHR,,45377c930,0.html>.

past violations of civil and political rights but also the issue of economic, social, and cultural rights.²⁰

To better appreciate the current endorsement and institutionalization of the truth-seeking principle by the UN it is useful to compare this position to earlier UN policies. For example, the 1985 *UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* does not include any reference to truth-seeking or to truth commissions. It states that victims are entitled for access to justice, restitution, compensation, and assistance and calls for judicial and administrative mechanisms to address these entitlements.²¹ Similarly, in 1993 the UNHCHR issued a report. While the report includes investigation into the fate of victims as one of the obligations of states following gross human rights violations, it does not refer to any of the potentially unique goals of truth-seeking commissions.²² Notably, by the early 1990s the UN was already initiated and involved in the operation of the truth commissions in El Salvador and Guatemala, so one cannot argue that the UN was unaware of truth commissions. Rather, the language of the 1993 report reflects the narrow conceptualization of the truth-seeking process at the time merely as a fact-finding mechanism, which ultimately might lead to criminal prosecution.

²⁰ Louise Arbour, "Economic and Social Justice for Societies in Transition," in *Second Annual Transitional Justice Lecture hosted by the Center for Human Rights and Global Justice at New York University School of Law and by the International Center for Transitional Justice, October 25, 2006* (New York, NY: New York University School of Law, 2006).

²¹ *United Nations General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Resolution 40/34, November 29*, (The United Nations, 1985 accessed July 15 2008); available from http://www.unhchr.ch/html/menu3/b/h_comp49.htm

²² Theo van Boven, Special Rappoorteur, Study Concerning the Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, Excerpted from UN Doc.E/CN.4/sub.2/1990/10(26 July 2006) cited in Neil J Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, 3 vols., vol. 1: General Considerations (Washington, DC.: United States Institute of Peace, 1995), 523.

The embeddedness to the truth-seeking principle is not only evident in the general policy of the UNHCHR but also in the active UN involvement in specific cases. In recent truth and reconciliation commissions the UN has been more active at earlier stages of the negotiations, decision-making, and design of truth commissions and there is also growing participation in the truth-seeking process (i.e., growing number of international commissioners and support staff). For example, in the Sierra Leone TRC, it was the UN that advocated a truth commission during the peace negotiations. A Special Representative of the Secretary-General and the High Commissioner for Human Rights participated in appointing the non-citizen members to the commission and the UN was the primary donor to the commission's operation.²³ Other cases in which the UN has been distinctively involved include East Timor (2002), Liberia (2004), Burundi (2005), The Democratic Republic of Congo (2005/6), and also more recently in the initiation of truth-seeking processes in Afghanistan, Iraq and Kenya.

The endorsement of the truth-seeking principle by the UN (specifically by the UNHCHR) has further implications for the institutionalization of this principle and the cascading of international norm. The UN not only teaches and influences states' decision to have a truth commission, but it also exert power through its reputation, expertise and legitimacy which spread the truth-seeking principle to other institutions and actors at the international level. For example, based on the UN policy and guidelines, the United Kingdom Department for International Development has endorsed in its 2003 report the "emerging consensus around the existence of a right to truth," and specifically explored

²³ Michael O'Flaherty, "Sierra Leone's Peace Process: The Role of the Human Rights Community," *Human Rights Quarterly* 26, no. 1 (2004).

the utility of truth commissions and other transitional justice mechanisms for poverty alleviation in post-conflict developing countries.²⁴

The Right to Truth

A specific aspect of the truth-seeking principle's institutionalization is the emergence of the universal right to truth. Legal scholars identify the right to truth as an emerging principle in international law.²⁵ The origin of the right to truth is traced to the right to information that was first introduced in the early 1980s in the African Charter on Human and Peoples' Rights.²⁶ Later on, the right to truth was reaffirmed and expanded mostly by the Inter-American Court of Human Rights (IACHR) in a number of precedent decisions. The 1988 Velasquez Rodriguez case, for example, not only reaffirmed the right to information of families and victims of human rights violations, but also assigned the state with the duty to investigate and provide this information.²⁷ In addition, in the 2000 of Romero v. El Salvador decision the IACHR states that the right to the truth is "a

²⁴ *Department of International Development; Departmental Report 2003, CM5914*, (Department of International Development, United Kingdom, 2003 accessed March 22 2009); available from <http://www.dfid.gov.uk/pubs/files/departamental-report/2003/default.asp>.

²⁵ Juan E Mendez, "Accountability for Past Abuses," *Human Rights Quarterly* 19, no. 2 (1997): 117, Juan E Mendez, "The Human Right to Truth: Lessons Learned from Latin American Experiences with Truth-Telling," in *Telling the Truth: Truth Telling and Peace Building in Post-Conflict Societies*, ed. Tristan Anne Borer (Notre Dame, IN: University of Notre Dame Press, 2006), 116.

²⁶ Article 9/1 in the African Charter on Human and Peoples' Right (also know as the Banjul Charter, June 27, 1981) guarantees that "every individual has the right to receive information," *African Charter on Human and Peoples' Rights, June 27*, (Organization of African Unity, 1981 accessed July 15 2008); available from <http://www.hrcr.org/docs/Banjul/afrhr.html>.

²⁷ Velasquez Rodriguez case, IACHR, judgment of July 29, 1988, Ser. C, no.4 (1988), par.181 See also the Trujillo Orazo case, IACHR, judgment of February 27, 2002, Ser. C, no.92 (2002), par 114 and 115. Cited in Juan E Mendez, "The Human Right to Truth: Lessons Learned from Latin American Experiences with Truth-Telling," in *Telling the Truth: Truth Telling and Peace Building in Post-Conflict Societies*, ed. Tristan Anne Borer (Notre Dame, IN: University of Notre Dame Press, 2006), fn. 5 and fn. 8 respectively.

collective right that enables society to have access to information essential to the development of democracies.”²⁸

Beyond customary international law, the right to truth discourse was also adopted by human rights activists and later on by the UN as part of the campaign to against impunity. In 1996 UN Sub-commission for Prevention of Discrimination and Protection of Minorities drafted a proposal for the *Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*. This proposal refers to the right to truth as the right for information and calls for both open access to documents and for initiation of fact-finding commissions.²⁹ A year later (1997), the UN Economic and Social Council published a report by the Special Rapporteur, Louis Joinet. The report focused on the right to truth and significantly expanded its scope. This report viewed the right to truth as a collective right, which places a duty on states to investigate, acknowledge, and remember the truth:

The right to know is also a collective right, drawing upon history to prevent violation from recurring in the future. Its corollary is a “duty to remember”, which the State must assume, in order to guard against perversions of history that go under the names of revisionism or negationism; the knowledge of the oppression it has lived through is part of the people’s national heritage and as such must be preserved.³⁰

²⁸ Romero v. El Salvador, Inter-American Court of Human Rights, Case 11.481, OEA/ser.L/V/II.106 2000, at para. 144, cited in Mark Freeman, *Truth Commission and Procedural Justice* (Cambridge, UK: Cambridge University Press, 2006), 8, fn. 13.

²⁹ *Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*, (UN Subcommission for Prevention of Discrimination and Protection of Minorities, Commission on Human Rights, Economic and Social Council, The United Nations, E/CN.4/Sub.2/1996/18, June 29, 1996 accessed July 15 2008); available from <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G96/129/48/pdf/G9612948.pdf?OpenElement>.)

³⁰ Louis Joinet, *The Administration of Justice and the Human Rights of Detainees: Question of the impunity of perpetrators of human rights violations (civil and political)*, E/CN.4/Sub.2/1997/20/Rev.1, October 2 (Economic and Social Council, The United Nations 1997 accessed July 15 2008); available from http://www.swisspeace.ch/typo3/fileadmin/user_upload/pdf/KOFF/9UN.pdf

The right to truth discourse has entered the debates over truth commissions. As early as the South African TRC, advocates of the truth commission have used the right to truth discourse to evaluate and argue about the independent merits of truth commissions.³¹ This resulted in a close association between the right to truth and truth commissions that are the specific mechanism for attaining this right. This association gained official credence in the 2005 UN's *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*:

Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systemic violations, to the perpetration of those crimes [PRINCIPLE 2: The Inalienable Right to the Truth].

Societies that have experienced heinous crimes perpetrated on a massive or systemic basis may benefit in particular from the creation of a truth commission or other commission of inquiry to establish the facts surrounding those violations so that the truth may be ascertained and to prevent disappearance of evidence [PRINCIPLE 5: Guarantees to Give Effect to the Right to Know].³²

These principles reaffirm the positive and invaluable role of truth commissions. The report, by Diane Orentlicher, also emphasizes the right for knowledge and acknowledgment as well as the duty to preserve national memory.³³ These principles and

³¹ Priscilla B Hayner, "International Guidelines for the Creation and Operation of Truth Commissions: A Preliminary Proposal," *Law and Contemporary Problems* 59, no. 4 (1997): 176, fn. 176.; Patricia Valdez, "The Right to Truth," in *After TRC: Reflections on Truth and Reconciliation in South Africa*, ed. James Wilmot and Linda Van de Vijver (Columbus, OH: Ohio University Press, 2001).

³² Diane F Orentlicher, *Promotion and Protection of Human Rights (Report of the independent expert to update the Set of Principles to Combat Impunity)* E/CN.4/2005/102/Add.1. February 8 (Commission on Human Rights, Economic and Social Council, United Nations, 2005 accessed July 15 2008); available from <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/pdf/G0510900.pdf?OpenElement>.

³³ It is of particular significance that this report was authored by Professor Diane Orentlicher. Notably in the early 1990s Orentlicher was one of the most vocal opponents of truth commissions. Her 1991 article "Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime," in the *Yale Law Journal* was a central to legal arguments against truth commissions (see Chapter 6; *Legal Criticism from Human Rights Activists*). More recently, Orentlicher change of heart about truth commissions has been even more pronounced. In a 2007 article, "Settling Accounts Revisited," she reflects on the evolution in her thinking: "I inevitably have a deeper appreciation for the multifaceted nature of transitional justice and the special contribution that nonjudicial measures, when effective, can make to a broader process of political

specifically the association between the right to truth and truth commissions were officially endorsed in UNHCHR Resolutions as well as by Amnesty International.³⁴ More recently, a Report of the Office of the United Nations High Commissioner for Human Rights issued even stronger guidelines stating that the right to truth is inalienable, autonomous, and non-derogable and should not be subject to limitations.³⁵

Overall, the right to truth has developed gradually in three specific aspects. First, it has developed from a narrow legal right to seek information to the universal right of victims to seek and receive not only knowledge but also acknowledgment. Second, it has developed from an individual right to both an individual and collective right. Third, from a mean for other rights or justice, the right to truth has emerged as a distinct human right.³⁶ These developments mirror the changes on the “logic of appropriateness” for truth commission. Indeed, in the right to truth discourse there is an inherent nexus between this right and truth commissions, which are designated in official reports and resolutions as the proper mechanism for at least initial fulfillment of this right.

and social transition... the work of highly respected truth commission can facilitated a broader and more complex understanding of the machinery of mass atrocity than the circumscribed verdict of a criminal proceeding can do.” Diane F Orentlicher, “Settling Accounts Revisited: Reconciling Global Norms with Local Agency,” *International Journal of Transitional Justice* 1, no. 1 (2007): 16.

³⁴ *Human Rights Resolution 2005/66 - Right to the truth*, April 20, (Office of the High Commissioner on Human Rights (UNHCHR), United Nations 2005 accessed July 15 2008); available from <http://www.unhcr.org/refworld/category/LEGAL/UNCHR/45377c7d0,0.html>; *United Nations Human Rights Council Resolution 9/11. Right to the Truth*, (Human Rights Council, The United Nations, 2006 accessed July 15 2008); available from http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_9_11.pdf; *Truth, Justice and Reparation: Establishing an Effective Truth Commission*, POL 30/009/2007 (Public), June 11, (Amnesty International 2007 accessed July 15 2008); available from <http://www.amnesty.org/en/library/asset/POL30/009/2007/en/7988f852-d38a-11dd-a329-2f46302a8cc6/pol300092007en.html>.

³⁵ *United Nations Human Rights Council Resolution 9/11. Right to the Truth*, (Human Rights Council, The United Nations, 2006 accessed July 15 2008); available from http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_9_11.pdf.

³⁶ Naomi Roht-Arriaza, “The new landscape of transitional justice,” in *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge, UK Cambridge University Press, 2006), X, fn. 8.

International Institutionalization: The Epistemic Community

The second measure for the institutionalization of the truth-seeking principle is the institutionalization and professionalization of the transitional justice epistemic community. Earlier chapters analyzed the emergence and consolidation of this community during and following the South African TRC. As the membership in the community of transitional justice practitioners, advocates, and scholars grew so did the scope and frequency of the interaction between these members. At one point, the hard-core members have realized the potential and need for institutionalizing the community and set to establish the community's distinct organizational apparatus – the International Center for Transitional Justice (ICTJ).³⁷ The professionalization of the transitional justice epistemic community also presents itself in the emergence of a new and prolific field of academic studies, which includes by now classic scholarly texts, expert scholars, and its own academic journal. Both these developments not only demonstrate the institutionalization of the truth-seeking norm but also facilitate its further cascading.

The International Center for Transitional Justice (ICTJ)

Following his role as the deputy Chair of the South African TRC, Alex Boriane has received numerous invitations to talk about his experience as well as to advise others on how to follow the South African way to reconciliation. As he noted in an interview, “I soon realized one could not do it as a solitary person trying to cope with very complex

³⁷ I focus herein the ICTJ since it was founded by what I have identified as the core members of the epistemic community. Moreover, the ICTJ is without a doubt the leading NGO in this issue-area. However, the ICTJ is by no means the only non-governmental organization dedicated to the truth-seeking principle. Other NGOs that engage in transitional justice and truth-seeking specifically include: *Search for Common Grounds*, <http://www.sfcg.org/>; *Project on Justice in Times of Transition*, <http://www.pjtt.org/>; *Transitional Justice Project*, *Rule of Law Program*, *United States Institute of Peace*, <http://www.usip.org/ruleoflaw/projects/transitional.html>

issues ... in a meeting here in NY, I suggested that there needed to be a new center that would try to meet with requests, demands from so many countries in transition.”³⁸ Pricilla Hayner, whom Boraine knew from the preparatory process of the South African TRC, was a Consultant with the Ford Foundation at the time. She arranged a meeting for him and Paul van Zyl, the South African TRC Executive Secretary, where they presented the Ford Foundation with a five-year proposal for a transitional justice organization. The ICTJ began operating in March 2001 to “assists countries pursuing accountability for past mass atrocity or human rights abuse.”³⁹ To distinguish itself from other human rights organizations that focus on accountability, the Center’s initial mission emphasized not only justice but also the psychological-therapeutic dimensions of accountability.⁴⁰

The three founders, Boraine, Van Zyl, and Hayner, invited to the organization’s Board of Directors people with whom they worked during the preparatory process of the South African TRC (e.g., Jose (Pepe) Zalaquett and Justice Richard Goldstone) as well as leading activists in the human rights community (e.g., Ian Martin who was the Secretary General of Amnesty International, the Argentinean activist and scholar Juan Mendez, and Political Scientist and activist Louis Bickford). Within a year from its opening the Center’s staff grew from four core staff members working out of temporary offices to a staff of twenty, and by 2004 it doubled again to more than 40 full-time staff members as well as many more affiliated consultants and experts. By 2006, the Center had more than 100 employees.

³⁸ Alex Boraine, “interview by the author, tape recording,” (International Center for Transitional Justice, New York, NY).; Tamar Lewin, “For Nations Traumatized By the Past, New Remedies,” *The New York Times* 2001.

³⁹ Mission Statement at *International Center for Transitional Justice Official Website*, (accessed 22 March 2009); available from www.ictj.org. In 2001, the Ford Foundation offered the initial funding. Additional financial support came from the MacArthur Foundation, the Carnegie Corporation, the Rockefeller Brothers Fund, and the Andrus Family Fund.

⁴⁰ Mission Statement at *Ibid.*, (accessed).

In the first five years of its operation the ICTJ significantly expanded its scope of operation. The Center's yearly budget tripled, from \$2,969,919 in the 2001/2 fiscal year to \$8,672,488 in the 2006/7 fiscal year. In 2001/2002 the Center was actively working in sixteen countries and by 2006 that number has doubled. It now has, in addition to the New York office, ten local offices in Brussels, Cape Town, Geneva, Cairo, Kinshasa, Monrovia, Bogota, Dili, Jakarta, and Kathmandu. These local offices, especially the ones in the Middle East and Asia, are aimed at working with local élites in order to prepare the ground for future processes of democratic transition.⁴¹

Another area of growth is the Center's research and analysis activities. While in its first years it published four studies a year, in 2006 it published eighteen studies.⁴² These studies reveal the thematic expansion of the Center's operation. Most of the Center's early publications focused on truth commissions and in later years the array of issues covered has become wider. Overall, in the relatively short time it has been operating the ICTJ has become a leader in advocating, studying, and practicing transitional justice. As a matter of fact, it has become the organizational apparatus that defines what transitional justice is.

Two areas of the Center's operation particularly demonstrate the role of the ICTJ in spreading the truth-seeking norm. In the first place, the Center has been effective in building a worldwide transitional justice network of practitioners, scholars, and leaders. From early on, this network-building has been facilitated by the *Transitional Justice in the News* newsletters and the *Global Transitional Justice Alliance* initiative. In December

⁴¹ Priscilla B Hayner, "interview by the author, tape recording," (International Center for Transitional Justice, New York, NY).

⁴² To date, the Center's productivity is even growing with nineteen studies in 2007 and twenty-nine in 2008, see Publications at *International Center for Transitional Justice Official Website*, (accessed 22 March 2009); available from www.ictj.org.

2002 the Center initiated the *Managing Truth Commissions Affinity Group* (MTC) that brought together the executive management of truth commissions in Ghana, Peru, and East Timor and the former executives of truth commissions in Argentina, Guatemala, and South Africa in order to exchanged strategies and experiences.⁴³ The Center also outreach to expand the transitional justice network by setting the next generation of transitional justice scholars. It offers intensive seminars (e.g., the *Transitional Justice Essential Course* taught in partnership with New York University, School of Law)⁴⁴, graduate certificates in transitional justice (10-weeks program in transitional justice)⁴⁵, and a fellowship program for human rights activists (six months program at the Institute for Justice and Reconciliation in South Africa; primarily for activists from Africa and Asia). In another program, the ICTJ offered training to journalists in Africa on how to increase public knowledge about post-conflict justice related issues, including specifically truth commissions.⁴⁶

The Center also targets specific NGOs and initiates collaborative work with them and the UN.⁴⁷ In its first year of operation the Center initiated collaboration with thirteen local and global NGOs. By 2004/5 the number grew to forty-five. The ICTJ has been working closely with the UNHCHR. This collaboration was initiated in the Center's first year of operation through the personal ties between UN Secretary-General at the time, Kofi Annan, and Alex Boriane. It continued with several seminars that were organized by

⁴³ 2002/2003 *Annual Report* (International Center for Transitional Justice 2003 accessed July 15 2008); available from <http://www.ictj.org/images/content/1/8/182.pdf>.

⁴⁴ See Workshops at *International Center for Transitional Justice Official Website*, (accessed 22 March 2009); available from www.ictj.org.

⁴⁵ ICTJ Newsletter, December 20 2006Ibid., (accessed).

⁴⁶ *Transitions*, ICTJ Newsletter, October 2007Ibid., (accessed).

⁴⁷ *Truth Commissions and NGOs: The Essential Relationship*, (International Center for Transitional Justice April, 2004 accessed July 15 2008); available from <http://www.ictj.org/images/content/1/0/106.pdf>.

ICTJ for top UN management.⁴⁸ By now, the Center has established its status as the principle advisor to the UN on issues of transitional justice, including specific appointments (Juan E. Mendez the President of ICTJ appointed first UN Special Adviser on the Prevention of Genocide), appearances in the Security Council (Ian Martin, the ICTJ Vice President on The Role of Civil Society in Post-Conflict Peace-Building, June 2004), and collaboration with the Secretary-General office (on the 2006 update UN Secretary-General Guidelines on Accountability).⁴⁹ According to some commentators, the ICTJ has become co-equal, if not even more principle than the United Nations during processes of democratic transition and post-conflict reconstruction.⁵⁰

The Center's in-country assistance and capacity-building strategies are the second area of operation where its influence is evident. When launched in 2001, the ICTJ was set to play a "catalytic role" and shape the policy choices of states.⁵¹ From the very early stages of states' transition and negotiations the Center's experts target persons who are likely to directly impact transitional justice policy developments, such as senior government officials, diplomats, foreign policy experts, and senior staff of international organizations. They offer analysis and draft legislations as well as technical assistance in developing truth commissions' methodology. For example, in 2004 the Center established the International Policymakers Unit, which, under the leadership of Priscilla

⁴⁸ 2002/2003 *Annual Report* (International Center for Transitional Justice 2003 accessed July 15 2008); available from <http://www.ictj.org/images/content/1/8/182.pdf>.

⁴⁹ ICTJ Newsletter, July 14, 2004 *International Center for Transitional Justice Official Website*, (accessed 22 March 2009); available from www.ictj.org. Since 2006, the ICTJ has been also working with key institutions within the European Union establishing a partnership similar to the one it already has with the United Nations.

⁵⁰ Eric Sotver, Hanny Megally, and Hania Mufti, "Bremer's 'Gordian Knot: Transitional justice and the US occupation of Iraq,'" in *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge, UK: Cambridge University Press, 2006), 249.

⁵¹ David C Anderson, "What Kind of Justice?," in *Ford Foundation Report, Summer 2001* (New York, NY: The Ford Foundation 2001), 29.

Hayner, offers briefings, seminars, and intensive, high-level retreats or conferences to senior policymakers in intergovernmental institutions and in national governments.⁵² Local leaders repeatedly attest to the significance of their partnership with the ICTJ in shaping their transitional justice choices and facilitating the process.⁵³

The ICTJ does not only target leaders, but also introduces the goals and process of truth commissions to civil society and the wider public, often even before the transition had begun. By providing information and introducing the option of a truth commission early on this strategy generates demand-from-below. This pattern is well illustrated in the recent cases of the transitions in Afghanistan and Iraq. In Afghanistan the peace agreement did not address at all the issue of transitional justice. The official approach of Hamid Karazi was that peace was more important than justice.⁵⁴ There were no organized victims' groups or other civil-society advocacy organizations that focused on this issue.⁵⁵ In early 2002 a senior ICTJ associate presented the Afghan Independent Human Rights Commission (AIHRC) and the UN Assistance Mission in Afghanistan (UNAMA) with a detailed proposal for a public consultation to help determine a transitional justice policy

⁵² 2004/5 *Annual Report*, (International Center for Transitional Justice, 2005 accessed July 15 2008); available from <http://www.ictj.org/images/content/5/7/578.pdf>

⁵³ For example, Anlecto Guterres Lopez the Chairperson of the Commission of Reception, Truth and Reconciliation in East Timor notes "the Center [has] helped us clarify what we aim to achieve in our work and develop a path to get there," quoted in 2002/2003 *Annual Report* (International Center for Transitional Justice 2003 accessed July 15 2008); available from <http://www.ictj.org/images/content/1/8/182.pdf>. See also in the same spirit Galuh Wandita the Co-Program Manager of the Commission for Reception, Truth and Reconciliation in East Timor and E. Gyimah-Boadi, Executive Director, Center for Democratic Development, Ghana both quoted in 2001/2 *Annual Report* (International Center for Transitional Justice 2002 accessed July 15 2008); available from <http://www.ictj.org/images/content/1/8/183.pdf> Alex Boraine, as well, describe that in Peru following the request of local leader for assistance, it was the ICTJ that introduced the idea and format of the truth commission, Alex Boraine, "interview by the author, tape recording," (International Center for Transitional Justice, New York, NY).

⁵⁴ Patricia Grossman, "Truth, justice and stability in Afghanistan," in *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge, UK: Cambridge University Press, 2006), 255.; Hurst Hannum, "Human Rights in Conflict Resolution: The Role of the Office of the High Commissioner for Human Rights in UN Peacekeeping and Peacebuilding," *Human Rights Quarterly* 28, no. 1 (2006): 64.

⁵⁵ Ahmad Nader Nadery, "Peace or Justice? Transitional Justice in Afghanistan," *International Journal of Transitional Justice* 1, no. 1 (2007).

for Afghanistan. This proposal was later incorporated into the public report (January 2005) that was endorsed by President Karzai and led to the establishment of a Task Force on Transitional Justice.⁵⁶ The ICTJ continued advising the Task Force, which later came out with *The Action Plan for Peace: Reconciliation and Justice in Afghanistan* (December, 2005), including a recommendation for a truth commission.

In Iraq the context has been different but the pattern generating demand for the truth-seeking option was similar. The Iraqi people had little knowledge of or exposure to the idea of a truth commission and not much exposure to others countries' experiences.⁵⁷ However, even before the war in Iraq began the idea of establishing a truth commission in Iraq to confront the massive human rights abuses of the Saddam era was raised by international human rights organizations, including the ICTJ.⁵⁸ A month after the military operation began, Alex Boraine published an Op-Ed arguing for an Iraqi truth and reconciliation commission.⁵⁹ Within a year, the ICTJ along with the Human Rights Center, University of California, Berkeley, published a report that "found legitimacy and public support for a truth-seeking process in Iraq."⁶⁰ As part of its consultancy to the

⁵⁶ "A Call for Justice: A National Consultation on past Human Rights Violations in Afghanistan, (The Afghan Independent Human Rights Commission (AIHRC), 2005 accessed January 12 2009); available from <http://www.ictj.org/static/Asia/Afghanistan/aihrc.callforjustice.eng.pdf>.

⁵⁷ *Iraqi Voices: Attitudes Toward Transitional Justice and Social Reconstruction*, (International Center for Transitional Justice, May, 2004 accessed July 15 2008); available from <http://www.ictj.org/images/content/1/0/108.pdf>.

⁵⁸ Eric Sotver, Hanny Megally, and Hania Mufti, "Bremer's 'Gordian Knot: Transitional justice and the US occupation of Iraq," in *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge, UK: Cambridge University Press, 2006). Human Rights Watch, for example, in a 2002 policy paper noted the "vital function" of a truth commission in Iraq *Justice for Iraq. Policy Paper*, (Human Rights Watch, December, 2002 accessed July 15 2008); available from <http://www.hrw.org/backgrounders/mena/iraq1217bg.htm>.

⁵⁹ Alex Boraine, "Let the UN put Saddam on trial: Justice in Iraq, April 21," *International Herald Tribune*, April 21 2003. In another Op-Ed several months later, Boraine was even stronger in his advocacy for an Iraqi truth commission, Alex Boraine and Paul Van Zyl, "Moving on requires looking back: Reconciliation, August 1," *International Herald Tribune* 2003.

⁶⁰ *Iraqi Voices: Attitudes Toward Transitional Justice and Social Reconstruction*, (International Center for Transitional Justice, May, 2004 accessed July 15 2008); available from <http://www.ictj.org/images/content/1/0/108.pdf>.

leadership, the ICTJ conducted a survey and focus groups, where they introduced the truth-seeking process to a broader audience. Initially, ninety-three percents of focus group participants said they have never heard of truth commissions, and favored the mechanisms of vetting and reparations: “[the respondents] demonstrated little familiarity with the concept of a truth commission, nor did they know of the particular experiences of commissions in South Africa, Chile, Peru, or elsewhere.”⁶¹ However, when the concept of truth-seeking was explained to the respondents, the over-all support for truth-seeking was high, and 95% were of the view that it is important to establish the truth of war time human rights violations and 41% viewed a truth and reconciliation commission as the institution most suitable to bring about reconciliation.⁶²

This pattern of introducing truth commissions to countries where there is no previous knowledge about them challenges the notion that a truth-seeking process is primarily initiated by demand from below.⁶³ While a request from locals usually sets the official process of establishing a truth commission in motion way before this official request the ICTJ provides information both to the leadership and to public which paves the way and creates the conditions for the local request.

Transitional Justice: Academic Field of Study

While the ICTJ is without a doubt a leader in researching and studying transitional justice, scholarly interest in the subject is much broader. In a 2002 Foreign Affairs article, Jonathan Tepperman observed that “the truth business, in short, is

⁶¹ Ibid., (accessed). 40

⁶² Ibid., (accessed). 29

⁶³ Uganda provides yet another example for this pattern of operation, Pham Phuong et al., *Forgotten Voices: A Population-Based Survey on Attitudes about Peace and Justice in Northern Uganda* (The International Center for Transitional Justice and the Human Rights Center (HRC) at the University of California, Berkeley, July, 2005 accessed July 15 2008); available from <http://www.ictj.org/images/content/1/2/127.pdf>.

booming,” and “a new academic discipline has sprung up to study the commissions.”⁶⁴ Similarly, Neil Kritz of USIP notes that “transitional justice has matured into a field of study world wide,” and cites that while between 1970-1989 there were only 150 publications (books, book-chapters, and academic articles) on transitional justice the number has jumped to more than 1000 publications during the 1990s.⁶⁵ Like any other academic field, transitional justice has its own “classic” texts that are cited repeatedly, including: the USIP *Transitional Justice* collection (edited by Neil Kritz); *Unspeakable Truths*, by Pricilla Hayner; *Transitional Justice* by Ruti Tietel; and, Alex Boraine’s autobiographical account of the South African TRC, *A Country Unmasked*.

In addition, elite universities in the United States offer seminars on transitional justice, in which truth commissions are often discussed at length. In conferences there are now distinct panels and chaired sections on transitional justice. For example, in the March 2008 Annual Convention of the International Studies Association, there were multiple panels on transitional justice, of which twenty eight papers on truth commissions specifically.⁶⁶ The topic of truth commissions also attracts many young scholars and at least thirty PhD dissertations on truth commissions were completed in the United States and Canada in the last decade.

A good indication for the institutionalization of transitional justice as a distinct academic field is the 2007 launching of the *International Journal of Transitional Justice* – a peer-reviewed academic journal by Oxford Journals. Notably, while the journal

⁶⁴ Jonathan D Tepperman, “Truth and Consequences,” *Foreign Affairs* 81, no. 2 (2002): 128.

⁶⁵ Gunnar Theissen, International Internet Bibliography on Transitional Justice (Version 1.1; 27 January 2000) cited in Neil J Kritz, “Where We are and How We Got Here: An Overview of Development in the Search for Justice and Reconciliation,” in *The Legacy of Abuse: Confronting the Past, Facing the Future*, ed. Alice A Henkin (Washington DC: The Aspen Institute, 2003), 22, fn.21.

⁶⁶ For the sake of comparison, the 2004 ISA Annual Convention (the first available on archive) they were only 9 papers on truth commissions. There were 12 papers in 2005 and 2006, and 17 papers in 2007.

publishes articles on transitional justice broadly defined, it has repeatedly emphasized the centrality of the truth-seeking principle. The Forward of the first issue, for example, was written by Archbishop Desmond Tutu, who notes the inspiration and universality of the South African model of “merciful justice.”⁶⁷ In the same issue the Editorial Note of the first issue emphasizes:

Perhaps one of the most interesting developments in the field of transitional justice has been the expansion of the concept to include mechanisms designed to address ‘truth’ and the incorporation of wider social concepts such as reconciliation, memory and identity, religious ideas like forgiveness, and perspectives from political science and sociology that consider the relationship of transitional justice to state-building, democracy, and institutional change.⁶⁸

Overall, one could argue the phenomena being institutionalized is transitional justice and not the truth-seeking principle nor the practice of truth commissions. While the distinction is not trivial and many overlaps are present, it is possible. In the first place, in the evidence it was possible to identify that the endorsement of the truth-seeking principle by major international organizations included the specific characteristics of the new normative, political, and psychological logics of truth commissions. Second, the right to truth discourse clearly sets the truth-seeking principle as a unique aspect of transitional justice, and has been closely tied to the practice of truth commissions. Third, the mission-statement and operation of the ICTJ have been prioritizing truth and reconciliation commissions. While the Center currently stresses an integrated approach to transitional justice its operation began by veterans and advocates of truth and reconciliation commissions. Especially in its first years of operation the ICTJ focused on

⁶⁷ Desmond M Tutu, "Reflections on Moral Accountability," *The International Journal of Transitional Justice* 1, no. 1 (2007).

⁶⁸ "Editorial Note," *International Journal of Transitional Justice* 1, no. 1 (2007): 2.

developing the general rationales for truth and reconciliation commissions and addressing specific cases.

Motivation Broadening

So far I have demonstrated that the truth-seeking principle has become a permanent and institutionalized feature at the international level. As such, it creates expectations from states and places new incentives and constraints on states' choices regarding addressing the legacy of their pasts. How do these expectations shape or interact with leaders' motivations? My theory posits that there will be growing international interest-based motivations to abide by the truth-seeking norm, that is, motivations to establish truth and reconciliation commissions. While cases in the early or pre-norm stages (pre-2000) are likely to present domestic interest-based motivations, as the norm is institutionalized one should find in later cases (post-2000) a new set of international motivations, such as international prestige and legitimacy.⁶⁹ This argument does not preclude normative and/or domestic interest-based motivations in later cases. As a matter of fact, this argument implies an expansion, rather than a change, of relevant motivations for establishing a truth and reconciliation commission. This is precisely the explanatory power of this proposition: the broadening of leaders' motivation to include international motivations does not only reflect the strength of the norm, but also facilitates its further cascading.

⁶⁹ The institutionalization of the norm does not occur immediately after the South African TRC. Therefore my cutting line is not the year of the TRC but the year 2000.

Why states establish truth and reconciliation commissions?

According to one observer of the truth commissions' phenomenon "announcing the creation of a truth commission has become a popular way for newly minted leaders to show their democratic bona fides and carry favor with the international community."⁷⁰ Leaders, such as Vojislav Kostunica in Yugoslavia and Alejandro Toledo in Peru for example, announced the establishment of a truth and reconciliation commissions as one of their first steps in office.⁷¹ The questions that emerge from this observation are what motivate state leaders to establish truth-seeking commissions? Who is the primary audience for leaders' public decision to initiate a truth-seeking process? This section and the table below briefly outline the potential motivations.

In the transitional justice literature there has been much written on how states choose between different transitional justice strategies, specifically between trials, truth commissions and doing nothing about the legacy of past human rights violations.⁷² By and large, a broad consensus has emerged around the "delicate balance of power" argument. Accordingly, the choice is determined by the power politics that prevailed throughout the conflict and during the transition. A truth commission, specifically, is the outcome of a negotiated transition, when the outgoing regime still holds power resources

⁷⁰ Jonathan D Tepperman, "Truth and Consequences," *Foreign Affairs* 81, no. 2 (2002): 128.

⁷¹ Ibid.

⁷² Samuel P Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma Press, 1991).; A. James McAdams, ed., *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame, IN: University of Notre Dame Press, 1997).; Jon Elster, "Coming to terms with the past: A framework for the study of justice in transition to democracy," *European Journal of Sociology* 39, no. 1 (1998).; Laura N O'Shaughnessy and Michael Dobson, "Political Bargaining and Democratic Transitions: A Comparison of Nicaragua and El Salvador," *Journal of Latin American Studies* 31, no. 1 (1999).; Michelle Sieff and Leslie Vinjamuri, "Reconciling Order and Justice? New Institutional Solutions in Post-Conflict States," *Journal of International Affairs* 52, no. 2 (1999).; Elin Skaar, "Truth commissions, trials – or nothing? Policy options in democratic transitions," *Third World Quarterly* 20, no. 6 (1999).; Kenneth Christie and Robert Cribb, eds., *Historical Injustice and Democratic Transition in Eastern Asia and Northern Europe: Ghosts at the Table of Democracy* (New York, NY: Routledge 2002).; Leslie Vinjamuri and Jack Snyder, "Advocacy and Scholarship in the Study of War Crime Tribunals and Transitional Justice," *Annual Review of Political Science* 7, no. 1 (2004).

yet there is public or civil society demand for justice. Leaders' motivations, according to the balance of power argument, stem primarily from their interest in establishing and maintaining stability.⁷³

As shown in the top-left cell in the table below, there are four main domestic motivations. The first one is avoiding the destabilizing effects of the alternative transitional justice choices. This avoids the controversy and potentially even violence that prosecutions may provoke, and on the other hand it avoids the public outcry and even the social upheaval if nothing is done about the legacy of human rights violations. Essentially, this motivation captures the idea of a truth commission as the lesser-of-two-evils. A second motivation is to curb and/or co-opt political opposition. Depending on the specific balance of power following the transition, the leadership of the new regime may want to form a coalition with opposition forces that either support (e.g., political actors that capitalize on an agenda of human rights) or oppose (e.g. political actors that either directly participated or represent the social group that participated in the human rights violations) accountability for human rights violations.

⁷³ There are two additional motivations that are beyond the scope of my hypothesis: the level and nature of repressions and violence during the conflict and third party intervention in preventing the violations. These two factors are often related since international intervention usually comes about in cases of gross human rights violations and specifically genocide. The main argument is that when there are gross human rights violations and when international intervention it is more likely that trials will follow. Examples include the Former Yugoslavia, Rwanda, and more recently Iraq, see Amber Ussery, "Confronting a Troubled Past: Civil Conflict and the Pursuit of Transitional Justice," in *Annual Meeting of the International Studies Association* (March 22-25, San Diego, California: 2006)..

	Interest-based motivations to initiate a national truth-seeking process	Normative-based motivations to initiate a national truth-seeking processes
Domestic	<ol style="list-style-type: none"> 1. Avoid destabilizing effects of other TJ choices. 2. Curb and/or co-opt opposition 3. Discredit political rivals 4. Gain domestic support and legitimacy <p>[pre-2000]</p>	<ol style="list-style-type: none"> 1. The right to truth 2. Belief that truth-seeking is positive: <ul style="list-style-type: none"> - Truth is justice - Truth heals - Truth reconciles
International	<p style="text-align: center;">↓</p> <p>[post-2000]</p> <ol style="list-style-type: none"> 1. International pressure and payoffs 2. Signal good intent 3. International prestige and legitimizations 	

Table 3: Motivations for establishing a truth commission⁷⁴

A third motivation is to discredit and “remove” political rivals. Accordingly, the new regime may use the process of truth-seeking in a very similar way to lustrations as a way to clean out the stables and “lock-in” its own position.⁷⁵ Finally, leaders seek broad domestic support and legitimacy. This motivation is often linked to international actors, such as human rights organizations, that mobilize domestic public opinion around this issue.⁷⁶ While international actors may be important in the campaign, the audience is primarily domestic.

⁷⁴ This table is adapted for the case of the truth-seeking norm from the general table presented in my theory chapter (Chapter 2; Table 1).

⁷⁵ Terry Moe, "Political Institutions: The Neglected Side of the Story," *Journal of Law, Economics, and Organization* 6, no. 1 (1999): 222.

⁷⁶ Michelle Sieff and Leslie Vinjamuri, "Reconciling Order and Justice? New Institutional Solutions in Post-Conflict States," *Journal of International Affairs* 52, no. 2 (1999).

The institutionalization of the truth-seeking norm and the cascading of truth and reconciliation commissions are expected to give rise to international norms (shown in the bottom left cell in the table above). In the first place, international organizations, and specifically the United Nations, may directly pressure or persuade states to establish a truth commission. Leaders will yield to this pressure to avoid sanctions (e.g., conditionality of aid) or to gain other guarantees or payoffs that the international organization may provide (e.g., continued involvement in the transition; peacekeeping forces). Second, leaders wish to signal good intent within international, regional, or even in bilateral settings. This motivation is particularly salient in a peace negotiation context, where the truth commission is part of the tradeoffs being negotiated. Beyond signaling good intent to an adversary, the audience may also be UN when it is involved in the negotiations. Finally, leaders are motivated to establish a truth commission to gain international prestige and legitimization. Ruling elite in a relatively weaker states and new-comers to the international system are likely to be insecure about their international status or reputation; therefore, they are more inclined to follow what is perceived as the international expectation: if dealing with ones past has become an important item on the check-list of democratization and conflict resolution than checking it off becomes a priority.

Neither the domestic nor the international motivations are entirely discrete, and it is likely that more than one motivation will operate in a specific decision. Domestic and international motivations for legitimization, in particular, tend to converge and reinforce each other.⁷⁷ Another likely convergence between domestic and international motivations

⁷⁷ Malda Bukovansky, *Legitimacy and Power Politics: The American and French Revolutions in International Political Culture* (Princeton, NJ: Princeton University Press, 2002).; Steven Bernstein, *The*

is when domestic groups refer to the international norm as a way to frame their own demands for a local truth commission. In this case, the audience is domestic; yet, the institutionalization of the truth-seeking principle at the international level is the leverage that shapes the domestic process.

The final type of motivations states leaders may have is normative (shown in the right cell in the table above). According to Jon Elster, “In deciding... the leaders of incoming regime are often influenced by their ideas about what is required for justice.”⁷⁸ That is, leaders have their own perceptions of fairness that motivates their decision. Accordingly, if a leader believes that the truth is a human right or that truth is justice, this belief can motivate him or her to establish a truth commission. The same logic applies to beliefs about the positive goals of truth-seeking, such as healing and reconciliation. Determining state leaders’ beliefs is often elusive. Cynics may never trust leaders with moral statements. In the analysis below, therefore, leaders statements about accepting the psychological and normative rationales of a truth-seeking process are taken with a grain of salt and only as a proxy for normative motivations.

The Empirics of Motivation Broadening

Early truth commissions, specifically in Latin America, were largely a domestic process and so were the motivations.⁷⁹ It is far more difficult to generalize about the motivations in more recent (post-2000) cases of truth and reconciliation commissions. Having said that, two general observations stand out. Firstly, in almost all the processes

Elusive Basis of Legitimacy in Global Governance: Three Conceptions, GHC 04/2 (Institute on Globalization and the Human Condition, University of Toronto, May, 2004 accessed July 15 2008); available from <http://globalization.mcmaster.ca/wps/Bernstein.pdf>.

⁷⁸ Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge, UK: Cambridge University Press, 2004), 80.

⁷⁹ See the discussion in Chapter 4.

leading to the establishment of a truth commission after 2000 there was a reference to the South African precedent and model. The circumstances of the South Korean Presidential Truth Commission on Suspicious Deaths, for example, were very different from the context of the South Africa TRC (e.g., narrower scope; not as part of democratization process); yet, it was publicly modeled after South Africa.⁸⁰ Also, there were repeated references of the idea that truth is a worthy goal independent of justice and the imminent nexus between truth and reconciliation.

Secondly, there were multiple references to the emerging international norm of truth commissions and the international expectation it places. In the case of the Ghanaian National Reconciliation Commission, for example, “the emergence of truth and reconciliation movement throughout the contemporary world” is cited as one of the rationales for their own national truth-seeking process.⁸¹ In a different context, the principle argument of critics of the Yugoslav Truth and Reconciliation is that “the Commission was just a weak attempt to placate the United States and the international community, which had been pushing Kostunica to address the legacy of the Milosevic era.”⁸² Indeed, the establishment of the Commission was on the eve of the 2001 Presidential Certification, which conditioned United States aid to Yugoslavia on cooperating with the International Criminal Tribunal for Yugoslavia (ICTY).

While these, and many other examples support the proposition that international audience and the truth-seeking norm itself play a role in states decisions to establish a

⁸⁰ Hong Seuk-ryule, "Finding the Truth on the Suspicious Deaths under South Korea's Military Dictatorship," *Korea Journal* 42, no. 3 (2002).

⁸¹ *The National Reconciliation Report*, (National Reconciliation Commission, Accra, Ghana, 2004 accessed July 15 2008); available from http://www.ghana.gov.gh/ghana/national_reconciliation_commission_report.jsp_0.

⁸² Mark Freeman, *Serbia and Montenegro: Selected Developments in Transitional Justice* (International Center for Transitional Justice, October, 2004 accessed July 15 2008); available from <http://www.ictj.org/images/content/1/1/117.pdf>.

truth commission they do not constitute a systematic support. A closer analysis of specific cases may provide a more robust test. In selecting the cases for this analysis two criteria guided me: first, keeping the context as constant as possible when considering motivations for establishing a truth commission before and after the truth-seeking norm has emerged; second, identifying a least-likely-case where one does not expect a truth commission, yet one has been established. The cases of Uruguay and Burundi fulfill the first condition and the case of Morocco fulfills the second one.

Uruguay and Burundi: Second Time Around

Both Uruguay and Burundi had two experiences with truth commissions, one before the South African TRC and one after. In this sense, they provide a natural quasi-experiment, where a state makes the decision to establish a truth commission once before there is an international norm of truth-seeking and once after this norm has emerged. One significant caveat to this “experiment” is that the observations are obviously not independent from each other. Nevertheless, these cases can inform whether the emergence of the norm has shaped and broadened the motivations to establish a commission. Moreover, the two cases offer variance in important relevant conditions. In Uruguay the first commission (1985) followed the transition from repressive authoritarian regime to electoral democracy and was one of the early democratic transitions in Latin America. The second commission (2000) was established after more than a decade of peaceful democratic regime. In Burundi both truth commissions (1995; 2005) were part of an ongoing and largely unsuccessful conflict resolution process, and there has been ongoing violence and human rights violations during the decade between the two commissions. Another significant difference is that in Uruguay both commissions were

entirely a national project with no international participation, while in Burundi both commissions were brokered and sponsored by the United Nations.

Uruguay was under military regime since 1973, where thousands of people had lost their jobs or were detained and imprisoned for political reasons. There were dozens of cases of disappearances and unexplained deaths, and 28,000 to 68,000 people were forced to political exile.⁸³ In the early 1980s, widespread social unrest and demonstrations have led to a negotiated democratic transition. The agreement that facilitated this negotiated transition was the Naval Club Pact (August 1984), in which the military allegedly demanded and received a guarantee that there will be no prosecutions. Indeed, in the 1985 election the Colorado Party led by Julio Maria Sanguinetti won with barely raising the issue of accountability, justice, or truth in its campaign.⁸⁴ By then the Argentinean National Commission on the Disappeared had been nearing the completion of its report and was a potential model; yet, President Sanguinetti explicitly opposed the idea of a commission in Uruguay and even quoted Ernest Renan on the merits of national forgetting.⁸⁵

Under Uruguayan law individuals who had wished to seek justice could do so in civilian courts. By December 1986 there were 734 cases under investigation of human rights violations. The government was increasingly concerned that there would be a rift

⁸³ Country Studies – Uruguay in Neil J Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, 3 vols., vol. 2: Country Studies (Washington DC.: United States Institute of Peace, 1995), 383.; Eugenia Allier, "The Peace Commission: A Consensus on the Recent Past in Uruguay?," *European Review of Latin America and Caribbean Studies* 81 (2006): 87.

⁸⁴ Samuel P Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma Press, 1991), 214.

⁸⁵ [Truth-telling] is not the basis of democracy. The basis of democracy is the people's conviction that it's the best system and that everyone can expect to exercise its right.... If the French were still thinking about the Night of St. Bartholomew, they'd be slaughtering each other to this day." President Julio Maria Sanguinetti quoted in Lawrence Weschler, *A Miracle, a Universe: Settling Accounts with Torturers* (New York, NY: Pantheon Books, 1990), 211.

with the military and the operation of the courts. Accordingly, the government passed the Law of Derogating the Punitive Capacity of the State (*Ley de Caducidad de la Pretension Punitiva del Estado*, 21 December 1986), which was essentially an amnesty law where the state relinquishes its right to prosecute those involved in violations of human rights.⁸⁶ Public opinion on the law was split. While many did not approve the law they saw no other alternative. Nevertheless, there was sizable outcry from opposition calling for information about the fate of the disappeared and justice. As a compromise, the Parliament established the Investigative Commission on the Situation of the Disappeared People and its Causes (*Comisión Investigadora sobre la Situación de Personas Desaparecidas y Hechos que la Motivaron*, 1985). The commission investigated and documented 164 cases of disappearances between 1973 and 1982. In the end, the commission's report was never officially announced to the public.

The Uruguayan early experience demonstrates the general pattern of early truth commissions (as discussed in chapter 4). The investigative commission was a narrow political compromise.⁸⁷ It was established as token and in response to public demand. President Sanguinetti opposed the commission in principle; yet, went ahead with it due to the potential of instability and in order to appease the opposition to his de-facto amnesty law.

The legacy of the military regime's human right violations all but disappeared from Uruguayan civil society. In 1986, a group of private researchers and later the Peace

⁸⁶ Alexandra Barahona de Brito, "Truth, Justice, Memory, and Democratization in the Southern Cone," in *The Politics of Memory: Transitional Justice in Democratizing Societies* ed. Alexandra Barahona de Brito, Carmen Gonzalez-Enriquez, and Paloma Aguilar (Oxford, UK: Oxford University Press, 2001). Specifically, 127-131 and 144-146.

⁸⁷ Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, NY: Routledge, 2001), 54.

and Justice Service (SERPAJ) began collecting evidence to be presented in future prosecutions. Their work lasted for more than three years. The report – the Uruguayan *Nunca Mas* (Never Again) – followed the Argentinean example. It came out in 1989 and became a national best-seller.⁸⁸ The private report did not ease demands for truth or justice yet there was little political will. Some local activists even tried to use pressure from international organizations (e.g., official resolutions by the Inter-American Commission on Human Rights and the UN Commission for Human Rights) but state officials repeatedly ignored this pressure.⁸⁹

After winning the 1999 elections, conservative President Jorge Batlle departed from the position of previous governments. Batlle was the first political leader willing to meet with Association of Mothers and Families of the Disappeared,⁹⁰ and on August 2000 he declared the establishment of the *Comisión para la Paz* (Peace Commission). The Commission's mandate focused on cases of disappearances committed under military rule, between 1973 and 1985 and on making recommendations for compensation. It had no judicial power and the stated goal focused on providing closure for victims and their families. The Commission operated for two years and its final report was published in 10 April, 2003. Left-wing political opponents and the Families of the Detained and Disappeared Organization accepted the importance of the report; yet criticized that the

⁸⁸ Uruguay Servicio Paz y Justicia, *Nunca Mas: Human Rights Violations, 1972-1985*, trans. Elizabeth Hampsten (Philadelphia, PA Temple University Press, 1989).

⁸⁹ "At least five different proposals for the creation of a 'truth' or 'reconciliation commission' were put forward between 1997 and 1998. Three polls on the society's position regarding the disappeared were published in 1997 and the result showed that between 54 and 63 per cent of those interviewed wanted an investigation to find the whereabouts of the disappeared," Eugenia Allier, "The Peace Commission: A Consensus on the Recent Past in Uruguay?," *European Review of Latin America and Caribbean Studies* 81 (2006): 88.

⁹⁰ Ibid.

process came with no real apology from the military and that the fates of many of the disappeared remained unresolved.

In the process leading to the establishment of the Peace Commission there are no significant indications that international motivations played any role in this decision. The reasons for President Batlle's departure from the policy position of previous leaders is best accounted by the continued domestic campaign for truth and justice. The decision to establish the Uruguayan commission was formed in late 1999 and early 2000. At the time, the truth-seeking norm was just emerging. Therefore, it is not entirely surprising that the Peace Commission does not confirm my proposition. Nevertheless, the design of the Peace Commission reflects the new logic of the emerging truth-seeking principle. Specifically, the commission focused on reconciliation as opposed to justice and the psychological rationale (e.g., providing healing and closure for victims) largely justified and framed the commission's mandate.⁹¹

In Burundi, the participation of the United Nations in the peace negotiation process and in the operation of both commissions was markedly significant. Since Burundi gained its independence from Belgium in 1962, the Tutsi minority (15%) dominated the political and social positions of power. Throughout the 1970s and 1980s the Tutsi used repression and violence against the Hutu majority (85%). The 1993 assassination of Melchior Ndadaye, who was a Hutu and the first democratically elected President, and the attempted coup by Tutsi officers, led to a full scale civil war. The widespread violence resulted with, by different estimates, between 25,000 and 300,000 deaths.

⁹¹ Mark Freeman, *Truth Commission and Procedural Justice* (Cambridge, UK: Cambridge University Press, 2006), 21.

In 1994 the Burundian government requested from the United Nations to establish a judicial international commission of inquiry to investigate reports of massacres. The government's main reason to approach the UN was to deter further violence.⁹² The International Commission of Inquiry for Burundi was established in July 1995.⁹³ It was largely modeled after the El-Salvadorian 1992 UN Commission on the Truth. The commission had no judicial power and the mandate narrowly focused on fact-finding and prevention measures. The commission operated for ten months and issued a confidential report, later to be published by the United Nations.⁹⁴

The motivation for the first commission in Burundi was domestic. The government initiated the request in order to deter and curb opposition to the regime. There was no popular input or demand as there was no civil society to talk of at the time. There was also no significant international pressure or incentives to establish a commission. On the contrary, both the UN and Amnesty International were initially hesitant and concerned that the investigation will spark further violence. Similar reasons also precluded the initial publication of the final report.

The fighting in Burundi continued. In 2000 the UN brokered another attempt of negotiations, with Nelson Mandela, the former South African leader as the Chief Mediator.⁹⁵ Mandela's diplomacy was guided by the idea that Burundi can follow the South African model of negotiations. While largely a failure, the peace negotiations led

⁹² Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, NY: Routledge, 2001), 67.

⁹³ *Security Council Resolution, 1012, UN. Doc. S/RES/1012, August 28*, (The United Nations, 1995 accessed July 15 2008); available from http://www.usip.org/library/tc/doc/charters/coi_burundi1995.html.

⁹⁴ *International Commission of Inquiry for Burundi: Final Report*, (Truth Commissions Digital Collection, United States Institute of Peace, 2002 accessed July 15 2008); available from http://www.usip.org/library/tc/doc/reports/burundi_coi/burundi_coi1996toc.html

⁹⁵ *Mandela: Burundi's Gloomy Politicians, October 12*, (BBC News, 2001 accessed July 15 2008); available from <http://news.bbc.co.uk/2/hi/africa/1592973.stm>.

to the signing of the Arusha Peace and Reconciliation Agreement for Burundi (20 August 2000). In 2000-2001 Burundi was low on the list of priorities of the international community and the UN. The local government was eager to gain more involvement from the UN during and following the negotiations.⁹⁶ Initially, the local government requested UN-sponsored tribunal; yet, the UN refused arguing that the international tribunal would be too costly and inefficient. In the end, the Arusha Accord publicly called for a truth and reconciliation commission, and the commission's draft legislation was passed in December 2000.⁹⁷ As fighting between the government and the different rebel groups continued, the UN Security Council initiated a new mission in 2004 that focused on national reconciliation. The 2004 peace agreement included renewed calls for truth and reconciliation and immunity close to all combatants.⁹⁸ By 2005, the UN Security Council added to the truth and reconciliation commission a special chamber to prosecute war crimes and human rights violations.⁹⁹ The commission, which was comprised of three international and two Burundian commissioners, was mandated to investigate the killings that have taken place since independence from Belgium in 1962 through 2000, while the special chamber was to judge 1973 Hutu mass killings and the 1993 Tutsi mass killings.

The UN played a decisive role in the two Burundian commissions. However, while in the first commission the UN was largely responding to local requests, in the second commission, the UN involvement largely motivated the decision. As was noted

⁹⁶ David Rieff, "Suffering and Cynicism in Burundi," *World Policy Journal* 18, no. 3 (2001).

⁹⁷ *Burundi: Government Pleased with UN Resolution on Truth Commission*, June 22, (Global Policy Forum, 2005 accessed July 15 2008); available from <http://www.globalpolicy.org/intljustice/general/2005/truthcom.htm>

⁹⁸ Report of the Secretary-General on Burundi, UN SCOR, 84, Doc. S/2004/210, 2004, cited in Hurst Hannum, "Human Rights in Conflict Resolution: The Role of the Office of the High Commissioner for Human Rights in UN Peacekeeping and Peacebuilding," *Human Rights Quarterly* 28, no. 1 (2006): 74.

⁹⁹ *Security Council Resolution 1606 (2005) on the process of the Peace and Reconciliation Agreement for Burundi*, S/RES/1606 (2005) June 20, (United Nations Security Council, 2005 accessed February 3 2009); available from <http://www.unhcr.org/refworld/docid/42bc1ea74.html>

above, Mandela's mediation introduced the South African model as the suitable framework, and while locals wanted trials they accepted his framework largely to keep the UN engaged in Burundi. Recently, the ICTJ reported that there was indeed very little domestic interest in transitional justice mechanisms, per se.¹⁰⁰ Another indication that the UN and not the domestic political opposition was the primary audience is that even in spite of opposition willingness, it was UN and not opposition representatives, whom the government invited to draft the TRC proposal.¹⁰¹ Even among the few civil society activists who forcefully advocated the truth and reconciliation commission the international audience was a motivating factor. For example, Jean-Marie Kavumbagu, a Burundian civil right activist, notes that beyond the justice for victims the process "would restore trust from the international community and attract foreign investment into the country."¹⁰²

Morocco: Least Likely Case

The Moroccan Equity and Reconciliations Commission (IER, 2004) often stands out as the first truth and reconciliation commission that was initiated by the ruling authorities not as part of a process of democratic transition or conflict resolution. Moreover, it is the first truth commission in the Arab world. The unique context marks a move beyond the established scope of the truth commissions' phenomenon. In this sense, the Moroccan case approximates a least likely case, where the basic conditions for a

¹⁰⁰ *Burundi; Submission to the Universal Periodic Review of the UN Human Rights Council, Third Session, December 1-12*, (International Center for Transitional Justice, 2008 accessed February 3 2009); available from <http://unu.ictj.org/images/content/1/0/1039.pdf>.

¹⁰¹ *Burundi: Truth and reconciliation – challenges facing a nation emerging from 12 years of civil war*, June 28, (UN Office for the Coordination of Humanitarian Affairs, 2006 accessed February 3 2009); available from <http://www.irinnews.org/InDepthMain.aspx?InDepthId=7&ReportId=59485&Country=Yes>.

¹⁰² *Ibid.*, (accessed).

truth-seeking process (i.e., post-transition or conflict resolution) are absent and one would not necessarily have expected one.

To understand the origins of the IER one needs to begin with the reign of King Hassan II (1961-1999) and the process of reforms he initiated. Soon after becoming a King (1961) Hassan II faced opposition, including two coup attempts and popular uprisings, which were repressed forcefully. The so-called Years of Lead (xaman al-rusas; les annes de plomd) were characterized by arbitrary detention, imprisonment, and torture of opposition activists claiming dozens deaths and many disappearances. By the early 1990s, the King faced growing domestic human rights activism and significant international public criticism, which included demonstrations in Europe and disparaging reports by Amnesty International. In 1992, for example, the European Parliament denied Morocco an aid package because of its poor human rights record.¹⁰³ King Hassan II was primarily concerned with the negative international image and specifically with the political and economic consequences this image may carry (e.g., the European Union's Euro-Mediterranean Partnership, which was conditioned upon Morocco's democratic reforms).¹⁰⁴ He initiated domestic reforms, including the creation of a Human Rights Advisory Council and issuing several royal acts of clemency.

The process of reforms continued gradually. While the reforms included some political changes towards democratic opening, the process was predominantly focused on human rights. In July 1999, following the death of King Hassan II, his son, King

¹⁰³ Marina Ottaway and Meredith Riley, "Morocco: Top-down Reforms to Democratic Transition? Number 71," in *Carnegie Papers, Middle East Series* (Washington, DC.: Carnegie Endowment for International Peace September, 2006), 5.

¹⁰⁴ Francesco Cavatora, "The International Context of Morocco's Stalled Democratization," *Democratization* 12, no. 4 (2005).; "Protectors or Pretenders? Government Human Rights Commissions in Africa," (New York, NY: Human Rights Watch 2001), 32.; Michael Willis and Nizar Messari, "Analyzing Moroccan Foreign Policy and Relations with Europe," *The Review of International Affairs* 3, no. 2 (2003).

Mohamed VI came to power. In his first Royal Speech, the King committed to expanding the reforms, specifically in the area of the rule of law and human rights.¹⁰⁵ Soon after, he initiated a commission of investigation, which included a compensation mechanism for victims of disappearances and arbitrary detentions under his father's rule.¹⁰⁶

In response to the King's openness to dealing with the legacy of human rights violations, a domestic non-governmental group – The Forum for Truth and Equity (Forum Marocain pour la Verite et l'Equite) – began with a public campaign for a broader national, public, and transparent truth and reconciliation process. One of the leaders of the Forum was Driss Benzekri, who was a political prisoner between the years 1974-1991.¹⁰⁷ The group focused its calls on a truth-seeking process and accepted that amnesty will be guaranteed. The setting up of IER was announced in a royal Speech in January 7, 2004. During its operation, the commission interviewed thousands of victims, conducted field investigations throughout Morocco, organized public hearings (many broadcasted on television, radio or the Internet), and built a database of more than 22,000 personal testimonies. The operation and the final report (December, 2005) received the King's complete endorsement.

On its face, King Mohamed VI motivation to establish the IER was to gain domestic legitimacy and support. Indeed, there is little evidence that the King was targeting the political opposition. The consultation process leading to the commission and its operation included elements of civil society while the political parties were largely

¹⁰⁵ Susan Slyomovics, "A Truth Commission for Morocco," *Middle East Report* 218 (2001): 18.

¹⁰⁶ Mohammed Ayat, "The Moroccan Experience of Transitional Justice," (Siracusa, Italy: Fighting Impunity and Promoting International Justice Project, European Initiative for Democracy and Human Rights, The International Institute of Higher Studies in Criminal Sciences (ISISC), 2008), 7.

¹⁰⁷ Pierre Hazan, "Morocco: Betting on a Truth and Reconciliation Commission, Special Report 165," (Washington, DC.: United States Institute of Peace, July 2006).

excluded. The Moroccan reform process in general included no fundamental political steps and some even argue that by focusing on the legacy of human rights violations the King reached to broader popular legitimacy while bypassing meaningful political reforms and maintaining the centralization of power in his own hands.¹⁰⁸

However, the motivation for popular legitimacy in itself is an insufficient account. As was noted above, the campaign of the Forum for Truth and Equity followed rather than initiated the King's openness to dealing with the legacy of human rights violations. Accordingly, the establishment of IER is rooted in the broader motivation for the reform process in general, which were to a great extent international. The importance of the international audience was also reflected in the operation of the IER, which one of its key characteristics was international transparency. For example, beyond the Moroccan official languages – Arabic and French – the IER publicized its activity (e.g., press releases, website and final report) also in English.

According to a Senior Fellow at the US Institute of Peace one of the main purposes of the IER has been to “solidify the image of a new, young, and modern monarch and project to the world the image of dynamic, democratic Morocco [...] This image is politically and economically important for a regime with close ties to the West, especially at a time of tension between parts of the Muslim world and the united States.”¹⁰⁹ In this sense, the King's motivations actually aligned with the agenda of the

¹⁰⁸ Marina Ottaway and Meredith Riley, "Morocco: Top-down Reforms to Democratic Transition? Number 71," in *Carnegie Papers, Middle East Series* (Washington, DC.: Carnegie Endowment for International Peace September, 2006).

¹⁰⁹ Pierre Hazan, "Morocco: Betting on a Truth and Reconciliation Commission, Special Report 165," (Washington, DC.: United States Institute of Peace, July 2006), 2 and 12.

local of civil society, who where also “anxious to burnish Morocco’s new image as a developing democracy.”¹¹⁰

Overall, the Moroccan case supports the proposition of convergence between domestic and international motivation for legitimization. For King Mohamed, even though the IER tainted the legacy of his fathers reign, this was a relatively small cost for the gain while projecting a positive image to his domestic and international audience. Like in other post-2000 commissions, we find in this case repeated references to the South African precedent. In fact, the IER followed both in its stated goals and process the South African TRC model.

Concluding Discussion

The truth-seeking principle and the growing practice of truth and reconciliation commissions appear to be here to stay. Since the early 2000s they have been visibly institutionalized at the international level. Especially telling is the position taken by leading human rights organizations that have shifted from early criticism to an endorsement of the ideas and practices of truth and reconciliation commissions. The endorsements by leading NGOs crate expectations and set new standards for states. Moreover, it informs and empowers local campaigns for truth and reconciliation commissions. The endorsement of the truth-seeking principle by the United Nations is even more significant. In its official policy, practice, and recommendations, the UN has endorsed the broader normative, political, and psychological rationales of truth-seeking commissions, as well as the positive nexus between truth-seeking, reconciliation, and

¹¹⁰ Sieglinde Granzer, "Changing discourse: transnational advocacy networks in Tunisia and Morocco," in *The Power of Human Rights: International Norms and Domestic Change*, ed. Thomas Risse, Stephen C Ropp, and Kathryn Sikkink (New York, NY: Cambridge University Press, 1999).

conflict resolution. It has also officially endorsed the universal right to truth. The UN has the capacity to shape the policy choices of states either by providing information and allocating resources or by participating in processes of transition.

These developments at the international level not only reflect the institutionalization of the norm but also facilitate the further cascading of the norm. The International Center for Transitional Justice builds a network of professional and activists, provides information, and educates local leadership and publics about the merits of a truth-seeking process. This pattern of activity challenges demand-driven explanations for the spread of truth commissions. What appears to be a domestic process is prompted, or at least assisted, by international actors and conditions that shape this process.

In her famous book about truth commissions (2001), Priscilla Hayner concludes: “in each case the call for a truth commission seems to reflect a genuine national desire for truth-telling. Rather than suggestions from outsiders, it is generally national – non-governmental advocates, victims’ groups, and members of the government of opposition – who have been pushing for these truth bodies.”¹¹¹ This somewhat idealistic account may have been accurate before the institutionalization and cascading of the truth-seeking norm. Robert Rotberg, who was the editor of the *Truth V. Justice* Volume (2000) and a long-time follower of the truth-seeking phenomenon, offers a more timely observation: “today the decision for having a truth commission is probably fifty percents supply and fifty percents demand.”¹¹²

¹¹¹ Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, NY: Routledge, 2001), 250.

¹¹² Robert Rotberg, “interview by the author, tape recording,” (Harvard University, Cambridge, MA).

The decision to establish a truth and reconciliation commission is a domestic decision; however, decisions are rarely mono-casual. In Burundi's second commission and more so in Morocco, domestic calls for truth and justice were an important input in the process leading to the establishment of their commissions. Yet, it was international factors (e.g., the United Nations' participation in the process in the case of Burundi and international image motivations in the case of Morocco) that brought about this process.

In a recent study, Jelena Subotic identifies the growing role of international motivations in the decisions to establish truth commissions. She argues that this pattern represents a "hijacked justice," where local elites adopt the norm yet do not undergo the social change that the norm entails.¹¹³ Subotic presents evidence that leaders are not genuinely committed to truth or justice but either capitalize on the international atmosphere that promotes truth commission or seek international approval. The question whether different motivations for establishing truth commissions indeed yield different outcomes is a valid empirical question. Even if this is the case, Subotic findings support my argument about the role of the international norm in shaping leaders' motivations. Contrary to Subotic, my argument suggests that the growing institutionalization of the norm at the international level actually makes it less likely that the outcome of the truth-seeking process will be weakened due to the instrumental motivations of its initiators.

The international environment today is remarkably different from thirty years ago when Idi Amin of Uganda established a sham truth commission (1974). The media coverage, the Internet, and the formal and informal networks of international and local transitional justice activists would make it very difficult for a truth-seeking process to be

¹¹³ Jelena Subotic, "Hijacked Justice: Domestic Appropriation of International Norms, working paper no. 28," (Denver, CO: Human Rights & Human Welfare, University of Denver, 2005).

based on deception. The ICTJ, specifically, has been monitoring closely the operation of recent truth commissions. Priscilla Hayner, who was involved with TRC in Sierra Leone since its inception, notes that many local leaders viewed the truth-seeking option as “the easy way out.”¹¹⁴ However, since the process was closely guided, supported, and monitored by international actors the “easy way out” scenario was impossible. Despite imperfections, the truth-seeking process in Sierra Leone was relatively deep and wide-ranging.

The international institutionalization of the truth-seeking norm actually places higher costs on leaders that attempt “the easy way out.” For example, the Truth and Friendship Commission (CTF) in Indonesia and East Timor was established primarily to appease the United Nations’ calls for criminal prosecutions.¹¹⁵ The CTF was badly designed and executed (e.g., transparency, inclusion of civil society, testimonies from victims). The ICTJ criticized rather than endorsed its operation and the UN Secretary General officially refused to cooperate with it. Consequently, Indonesia lost rather than gained its international reputation and even more international pressure for accountability was placed on its leadership. Thus, at the same time that the institutionalization of the norm creates new international motivations for states to establish truth commissions, it also shepherds the conditions that ensure higher standards of execution than those present before the norms’ emergence and cascading.

¹¹⁴ Priscilla B Hayner, “interview by the author, tape recording,” (International Center for Transitional Justice, New York, NY).

¹¹⁵ Megan Hirst, “Too Much Friendship, Too Little Truth: Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste,” (New York, NY: International Center for Transitional Justice, January, 2008).

Chapter 8

Truth Be Told: Conclusions

In 1967, Hannah Arendt wrote in *The New Yorker* that:

It will therefore come as something of a surprise that the sacrifice of truth for the survival of the world would be more futile than the sacrifice of any other principle or virtue. For while we may refuse even to ask ourselves whether life would still be worth living in a world deprived of such notions as justice and freedom, the same, curiously is not possible with respect to the seemingly so much less political idea of truth.¹

Today, four decades later, the normative standing of truth and the virtues of truth-seeking could not be more different. Especially in the last decade, the right to truth has emerged as a universal right of victims of human rights violations. The right to truth entitles victims to seek not only information about what lead to their suffering but also acknowledgment of their suffering. The right to truth, which has been officially endorsed by the United Nations, embraces not only the right of individuals but also the right of groups and nations for knowledge and acknowledgment of their collective historical narrative.

Truth-seeking commissions, which are the mechanisms most widely associated with the initial fulfillment of the right to truth, have become a permanent feature of transitional and post-conflict settings. The “universe of cases” of truth commissions between 1974 and 2006 included forty-one cases, of which twenty three were in the last decade. In 2007-2008, in addition to the six truth commissions that were already in drafting stages (Colombia, Kenya, Afghanistan, Iraq, Cote d’Ivoire, and Nicaragua), five

¹ Hannah Arendt, "Truth and Politics," in *Between Past and Future: Eight Exercises in Political Thought* (New York, NY: Penguin Books, 1967 (1993)), 229.

other states officially announced the initiation of their own truth-seeking processes (Nepal, Mexico, Ecuador, the Solomon Islands, and Canada).² In all of these initiatives, national reconciliation is a primary goal for the truth-seeking process and the majority of these initiatives cite the South African TRC as their model.

This dissertation argues that in the last decade the truth-seeking principle, which is manifest primarily in the practice of truth and reconciliation commissions, has emerged and cascaded as an international norm. It is not every day that new international norms emerge: new values and practices are rather a rare occurrence in world politics. The extent and the pace by which truth commissions have proliferated, therefore, provide a unique opportunity to observe changes as they occur in the international normative environment. Furthermore, the emergence and cascading of the truth-seeking norm has been a valuable case for refining and testing the propositions of my theory. In this chapter I present conclusions from my study pertaining to the emergence of the international norm of truth-seeking. I begin with a summary of my argument and the main findings of

² The proposal for a TRC in Nepal became official in August 2007. Its purpose is to examine crimes committed during the 1996-2006 armed conflict, see *Transitions Newsletter*, September 2007 *International Center for Transitional Justice Official Website*, (accessed 22 March 2009); available from www.ictj.org. Recently, on February 2, 2009, the Nepalese Prime Minister Office released the draft bill for the commission.

The proposal for a TRC in Mexico is still in its infancy. The purpose is to examine the country's "dirty war" in the 1960 and 1970s. See, *Transitions Newsletter*, September 2007 *International Center for Transitional Justice Official Website*, (accessed 22 March 2009); available from www.ictj.org.

The decision for a TRC in Ecuador was made by the government on May 6, 2007. Its purpose is to investigate human rights crimes committed during the 1980s. See, *Transitions Newsletter*, May-June 2007 *International Center for Transitional Justice Official Website*, (accessed 22 March 2009); available from www.ictj.org.

The proposal for a TRC in the Solomon Islands is still in its infancy. The purpose is to investigate ethnic violence, 1998-2003. See, *Transitions Newsletter*, October 2008 *International Center for Transitional Justice Official Website*, (accessed 22 March 2009); available from www.ictj.org.

Canada established a TRC on April 2008. Its purpose is to examine the legacy of forced cultural assimilation of Aboriginal children and other human rights violations See, "Canada's Truth and Reconciliation Commission," Special Press Release, April 29, 2008 *International Center for Transitional Justice Official Website*, (accessed 22 March 2009); available from www.ictj.org.

my research. I then focus on the implications of my findings, and I identify the possible direction the truth-seeking phenomenon is likely to take in the near future. Finally, I underscore the theoretical contribution of my research to the study of international norms.

The International Norm of Truth-Seeking: Summary of Argument

My research traces the emergence of the truth-seeking norm to the South African TRC (1995), which introduced new ideas about the scope and goals of truth-seeking, particularly the framing of the positive link between truth-seeking and democratization, reconciliation, and national healing. Instead of a “second-best” tool for justice, the truth-seeking process in South Africa has been conceived and rationalized in more ambitious terms, namely, as a way to transform South Africa from a divided nation into a unified and democratic society. In the process of norm emergence, the South African TRC constituted an ideal-type successful case that provided more than any other truth commission before or after the template for the goals and design of all future truth-seeking processes.

The South African TRC ‘s unique design and legacy did not emerge *ex nihilo*; rather, they were rooted in South Africa’s domestic context and the international attention that focused on South Africa’s history of apartheid. The design of the South African TRC also built on and reacted to the earlier truth commissions in Latin America. In the Latin American transitions (e.g., Argentina, Uruguay, Chile, and El Salvador) members of the former regime remained in positions of power and were able to ward off attempts to hold them accountable for human rights violations. The truth commissions were forged as a political compromise between the constraining power of the former regime and domestic

and international demands for justice and accountability. As I demonstrate, the Latin American truth commissions were conceived and perceived primarily as a fact-finding mechanism appropriate for situations in which human rights violations have been concealed or denied. They were framed as the minimum that has been feasible in light of political constraints and were practiced as a “weaker” solution, relative to trials, for addressing the legacy of gross human rights violations. These truth commissions were by no means a mechanism that could carry universal rationales or applicability.

After the South African TRC and the debates that followed it, the framing of the goals of truth commissions has changed significantly. In the new framing, truth commissions can achieve multiple and important political, psychological and moral goals and they can strengthen democratization. The framing of the truth-seeking process’s relative merits shifted from emphasizing what truth commissions can achieve in comparison with trials to emphasizing what truth commissions can achieve differently and even better than trials. The truth-seeking process has come to represent a different conception of justice, namely, restorative justice. By the early 2000s, there is no longer a debate around questions of truth commissions or trials, but how they complement each other and how to conjoin their operation. Combined, these changes have made truth commissions universally applicable and congruent with more settings, contexts, and states. This outcome was demonstrated in the application of the truth-seeking principle in contexts of conflict resolution and in cases of gross human rights violations, including genocide. In accordance with my theoretical proposition the change in the framing of truth commissions – or in its “logic of appropriateness” – account for the emergence of this practice as an international norm.

My argument proposes that we ought to conceive of this change in the “logic of appropriateness” as an agent-driven process, in which members of the transitional justice epistemic community played a significant role. Accordingly, the emergence of the truth-seeking norm was traced to specific individuals who in the South African context focused on the need for post-conflict reconciliation and identified the truth-seeking process as a restorative form of justice and the tool most suitable for collective social reconstruction. They prescribed a required solution – truth and reconciliation commission – while providing the normative and practical justifications for this policy choice. Their framing redefined in universal terms what states should expect to achieve by having a truth-seeking process and their arguments have made this policy-choice more persuasive.

These “truth-seeking experts” have come to be considered professional and scholarly authority in the new domain of Transitional Justice. As such, members of this epistemic community have propagated the notion that justice and reconciliation via the public procedure of truth commission is an important, if not indispensable, stage in states’ transition to democracy and for resolving conflicts. As I demonstrate, the personal and collegial relations between members of this growing epistemic community as well as conferences and other methods of information exchange account for the diffusion of these ideas.

Beyond the diffusion of ideas, members of this community have also been actively engaged in institutionalizing the truth-seeking principle. The International Center for Transitional Justice, which was founded in 2001 by core members of the epistemic community, has focused on strengthening the network of professionals and activists, providing information, and educating local leadership and publics about the merits of the

truth-seeking process. This pattern of active introduction and instigation of truth-seeking processes challenges demand-driven explanations for the spread of truth commissions. According to these explanations, the international spread of truth commissions is primarily the outcome of local demands for truth and justice and international actors only play a secondary role by responding to these demands. I demonstrated the reverse. I show how the ICTJ, specifically, has been spawning domestic demand by introducing the concept and potential merits of the truth-seeking process to places where there has been next to no local knowledge about them. What appears to be a domestic process is often prompted and greatly assisted by international actors. This conclusion does not imply that the epistemic community manipulates local decision makers. On the contrary, my analysis demonstrates the importance of the interaction between demand and supply; that is, between local needs and international processes of normative innovation and ideational change.

The ICTJ has also established close ties with other international organizations, which have come to officially endorse the truth-seeking principle and the practice of truth and reconciliation commissions. As I demonstrate, the endorsement by leading NGOs creates expectations and sets new standards for states. Moreover, it informs and empowers local campaigns for truth and reconciliation commissions. The United Nation's endorsement of the truth-seeking principle has been even more significant as the UN has the capacity to shape the policy choices of states either by providing information and allocating resources or by directly participating in processes of transition.

Overall, the institutionalization of the truth-seeking principle has created a new environment of international expectations and incentives. These developments at the

international level not only reflect the institutionalization of the norm but also facilitate the further cascading of the norm. Accordingly, and as I argue, states are increasingly motivated to have their own truth commissions in order to establish a benign image and gain international prestige and legitimacy. This is illustrated in Burundi's second commission and more so in Morocco, where domestic calls for truth and justice were an important input in the process leading to the establishment of their commissions. Yet, it was international factors (e.g., the United Nations' participation in the process in the case of Burundi and international image motivations in the case of Morocco) that brought about this process.

The International Norm of Truth-Seeking: Implications and Predictions

This dissertation explains why truth commissions spread and how the truth-seeking principle has emerged as an international norm. Neither the effects of the international spread of truth commissions nor the actual effects of truth commissions were the focus of this study. Nevertheless, having followed and documented this growing phenomenon for several years now, I am in a position to identify some of the implications of the international norm of truth-seeking. In what follows, I propose that my argument provides important guidelines for the empirical research on the impact and effectiveness of truth commissions. Next, I propose two broader practical implications of the truth-seeking norm: first, it provides the conditions for better-scrutinized and more effective truth-seeking processes; second, this norm modifies the definition of what it means to be a democracy or to become one, and therefore potentially places higher threshold for

newly democratizing states. Finally, I identify the directions the truth-seeking phenomenon is likely to take in the near future.

Implications for Empirical Research

As I demonstrate in my empirical analysis, the international spread of the truth-seeking norm has been underlined by the assumption or the rationalization that truth-seeking is by definition a good thing. In spite of the broad consensus that truth-seeking contributes to reconciliation, alleviates victims' suffering, promotes trust, and contributes to the consolidation of democracy and the building of a civil society; empirically measuring these assumed benign effects has been challenging.³ Most studies that seek to evaluate the impact and effectiveness of truth commissions focus on the idiosyncrasies of specific cases and offer scant general methodological criteria to follow. Recently, due to professionalization of transitional justice and the proliferation of academic writings on the topic, there has been an emphasis on the lack of empirical research on the impact of truth commissions.⁴ A recent editorial note in the new *International Journal of Transitional Justice*, stresses the "need to use the most rigorous quantitative and qualitative social science methods – including experimental designs – to test hypotheses

³ Some of these challenges are widely acknowledged in the literature, including different perspectives on the goals of truth commissions and therefore disagreement on what should actually be measured for their impact. Another challenge is the potential for co-linearity with other elements of the political transition, which makes it difficult to determine if indeed it was the truth-seeking process that accounts for the successful transition. Also, there are conceptual differences on what constitutes reconciliation, all the more on how to measure it. See, Tristan Anne Borer, "Reconciling South Africa or South Africans? Cautionary Notes from the TRC," *African Studies Quarterly* 8, no. 1 (2004).; Judy Baralou, "Trauma and Transitional Justice in Divided Societies " (Washington, DC.: The United States Institute of Peace, 2005).

⁴ "Evaluating Experiences in Transitional Justice and Reconciliation: Challenges and Opportunities for Advancing the Field, Workshop Report," (Center for the Study of Violence (CSVR), South Africa and International Development Research Center, Canada, April, 2007).

and causal models and begin to base our interventions on the best possible evidence.”⁵ Also recently, the International Center for Transitional Justice established a Research Unit (2008) to measure the impact of transitional justice mechanisms,⁶ and the United States Institute of Peace, published an edited volume dedicated to assessing the impact of transitional justice mechanisms.⁷

While these calls to assess the effects of truth commissions are welcomed, they overlook the changes in the goals and practice of truth commissions across time. As I argue, earlier truth commissions (pre-South Africa) operated within a different international normative environment, under different rationales and with different goals than later ones (post-South Africa). Therefore, it is misguided to either aggregate or compare early and late cases with regard to the same set of expected outcomes. For example, Snyder and Vinjamuri, who argue that proponents of truth commissions fail to properly evaluate the expected long-term benign effects of truth commissions (e.g., reconciliation, peace-building, individual and national healing), propose testing these effects by studying early cases of truth commissions.⁸ My argument and findings indicate that this suggestion is futile since neither the goals nor the design of the early truth commissions were intended to achieve these long-term effects.

⁵ "Editorial Note," *International Journal of Transitional Justice* 2, no. 2 (2008).

⁶ Transitions Newsletter, June 2008 *International Center for Transitional Justice Official Website*, (accessed 22 March 2009); available from www.ictj.org.

⁷ Hugo van der Merwe, Victoria Baxter, and Audrey R Chapman, eds., *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (Washington, DC.: United States Institute of Peace, 2009).

⁸ Jack Snyder and Leslie Vinjamuri, "Trials and Errors: Principle and Pragmatism in Strategies of International Justice," *International Security* 28, no. 3 (2004): 20. For similar criticism and similar suggestions see also, David Mendeloff, "Truth-Seeking, Truth-Telling and Postconflict Peacebuilding: Curb the Enthusiasm?," *International Studies Review* 6, no. 3 (2004): 362.

The bias of aggregating early and late cases of truth commissions is mostly apparent in large-n studies of truth commissions – a recent cottage industry in its own right.⁹ Sikkink and Booth-Walling, for example, include in their “justice cascade” dataset all truth commissions since 1974. They analyze the correlation between truth commissions and the recurrence of human rights violations in order to determine the deterrence effect of truth commissions.¹⁰ While deterrence might have been an important goal for early truth commission, since they were conceived as a weaker alternative to criminal trials, in the later truth commissions deterrence is by no means a central goal. Undifferentiating between the early and late cases of truth commissions is likely to yield bias in the evaluation of their effects. Using similar datasets, other scholars have proposed evaluating the effects of truth commissions on democratization.¹¹ In these studies, the problem of aggregation emerges from the different measurements for democratization these studies use. In Emily Brooke Rodio’s recent study, for example, she measures the effects of truth commissions on accountability, the rule of law, shared history and cooperation among groups. While the first two measures make sense for early truth commissions, this is not the case for using shared history and cooperation among

⁹ This bias is not unique to quantitative large-n studies. Small-n comparative studies also error by comparing early and late cases or by applying post-hoc analysis which seeks to evaluate effects that were not even conceptualized when the truth commission operated. Joanna R. Quinn, for example, applies the concept of restorative justice to evaluate the impact of the 1986 Ugandan Commission of Inquiry into Violations of Human Rights. Given that the concept of restorative justice was introduced to the logic of truth commissions only in the report of the South African TRC more than a decade after the Uganda truth commission, it is of little surprise that Quinn finds no lasting impact, Joanna R Quinn, “Constraints: The Un-Doing of the Ugandan Truth Commission,” *Human Rights Quarterly* 26, no. 2 (2004).

¹⁰ Kathryn Sikkink and Carrie Both-Walling, “Errors about Trials: The Political Reality of the Justice Cascade and its Impact,” in *Annual Meeting of American Political Science Association* (Washington, DC.: 2005).

¹¹ Eric Brahm, “Uncovering the Truth: Examining Truth Commissions Success and Impact,” *International Studies Perspectives* 8, no. 1 (2007).

groups, which are both dimensions of democratization that were associated with the truth-seeking process only in the South African TRC and after.¹²

I propose that in order to avoid these biases, researchers must contextualize their dependant variables, that is, the expected effects of truth commissions, within the process in which the goals and design of truth commissions have evolved and changed. At a minimum, large-n studies must include a time-series analysis that differentiates between early and late cases of truth commissions. Furthermore, the operationalization and measurement of the dependant variable should be informed by the rationales that framed the expected effects of truth commission at different points in time. In general, a methodology of case-study analysis is by far more suitable for measuring the impact and effectiveness of truth commissions.¹³ In case-study analysis, one can better control for measuring the expected effects of the truth-seeking process so these will represent what the initiators of the process intended to achieve from the outset. Also, case analysis can account and differentiate between the short and long-term effects of the truth-seeking process. If these methodological guidelines are followed, I anticipate that much of the criticism of truth commissions, based on the lack of reconciliation in early cases would lose their potency.

¹² Emily Brooke Rodio, "More Than Truth: The Impact of Truth Commissions on Democracy," in *International Studies Association Annual Meeting, March 26-29* (San Francisco, CA: 2007).

¹³ David Gairdner's comparative study of the truth commissions in Chile and El Salvador is an insightful positive example for qualitative study of the effects of truth commissions. Gairdner, does not attempt to assess impact of the commission in terms of healing or reconciliation; instead, analyses them precisely as they were originally designed for, that is, as a political tools during political transition, David Gairdner, *Truth in Transition: The role of truth commissions in political transition in Chile and El Salvador* (Bergen, Norway: Chr. Michelsen Institute, 1999).

Practical Implications

New international norms introduce new expectations, constraints, and incentives that shape states' choices and behavior, and therefore constitute change in the international environment in which states operate. In the case of the truth-seeking norm the change in the international environment has two important implications. In the first place, I propose that the international institutionalization of the norm secures more effective truth commissions and provides intrinsic safeguards from leaders who might have instrumentally or cynically attempt to abuse the truth-seeking process.

While in the past, truth commissions were a domestic affair, largely unaffected by the interests and influence of international actors; this is no longer the case. As I demonstrate, there is a growing involvement and direct participation of international actors (e.g., the ICTJ, the United Nations) in truth-seeking processes. Moreover, media coverage, the Internet, formal and informal networks of international and local transitional justice activists, and the ICTJ, specifically, monitor closely the operation of recent truth commissions. Truth commissions also have by now clearer guidelines and standards of operation that states are expected to follow. All these conditions make it unlikely that a truth-seeking process could be easily corrupted and abused. The international institutionalization of the truth-seeking norm shepherds the conditions that ensure higher standards of execution than those present before the norm emerged and spread. Therefore, the norm itself places higher costs on leaders that attempt "the easy way out." If one accepts that truth commissions have benign effects then the higher and scrutinized standards of operation make it more likely that these benign effects will materialize.

The institutionalization and cascading of the norm has an important bearing on the meaning of democracy, more precisely, on the meaning of what it takes to become one. Ernest Renan wrote in his famous *What is a Nation* essay (Quest-ce qu'une nation? 1882) that it is good for everyone to know how to forget.¹⁴ Indeed, most modern democracies were based on a tradition of forgetting. During democratization neither the French nor the English or the Americans have addressed the legacy of their old rivalries and atrocities or aspired for national reconciliation. Newly democratizing states, however, operate in an international environment in which they are expected to deal with their pasts. Under the international norm of truth-seeking, these states are expected not only to establish the rule of law and deliver justice, but also to go through a process of social reconstruction.

Accordingly, the threshold of what it takes to become a democracy is markedly higher than what it was in previous centuries. This observation does not entail abandoning truth-seeking altogether. In fact, suggesting "abandoning" the norm demonstrates a failure to understand the very basic meaning of an international norm. Once the truth-seeking principle has reached the point that it is an international norm rendering it null and void ceases to be viable. International norms are social facts and they, as well as the expectations they generate, cannot be undone easily. Having said that, acknowledging the higher threshold for new democracies is important. It should direct practitioners who implement and monitor processes of democratic transition and conflict resolution to fashion more realistic expectations from the truth-seeking process and from the states that pursue it.

¹⁴ Ernest Renan, "What is a Nation?," in *Becoming Nations: A Reader*, ed. Geoffe Levy and Ronald Grigor (Oxford, UK: Oxford University Press, 1882 (1993)).

The Future Course of Truth-Seeking

I turn now to outline the future course that the truth-seeking norm is likely to take. Overall, I anticipate the further cascading of truth and reconciliation commissions. The first area in which we are likely to see more truth commissions is in conflict resolution processes. As I demonstrate, one of the significant changes that make the truth-seeking principle congruent with more contexts and settings is the growing emphasis that truth-seeking commissions are appropriate and useful not only for political transitions, but also to facilitate peace-building processes. The positive nexus, at least potentially, between truth and reconciliation is receiving increased attention from scholars and practitioners of conflict resolution, who emphasize the importance of a truthful and shared narrative to cases where human rights violations run along ethnic or other group identities.

The further expansion of the use of truth commissions is also supported by a different type of argument that receives growing attention from scholars in the field of conflict resolution. In South Africa the negotiations over the TRC were part of the general bargaining game over regime change. In peace negotiation settings, a commitment to a truth-seeking process could signal positive intentions and function as a confidence-building measure. The truth-seeking process itself may be a bargaining chip to be negotiated in exchange for other claims and tradeoffs. In addition, as many practitioners of transitional justice argue, truth and reconciliation commissions legitimize and make possible the political and other compromises essential for terminating conflicts. Overall, these arguments open up the potential for incorporating truth commissions in settings of intra- and inter-state negotiations. This has already been the approach in the

commissions in Indonesia – Timor-Leste (2004) and Burundi (2005), and was also considered in the conflicts in Northern Ireland and Israel-Palestine.

The second area in which we are likely to see the further cascading of the norm is truth commissions by states that have for long been democracies; but following the institutionalization of the norm, turn to the “unfinished business” of coming to terms with their past. In general, when mature, or well-established, democracies have addressed issues of historical justice, the trend thus far has been to pursue the process through reparation schemes, apologies, historical-narrative revisions and commemoration.¹⁵ In the 1980s and early 1990s, the United States, Canada and Australia underwent historical truth commissions.¹⁶ These commissions, however, were conceptualized rather narrowly and were set primarily for the clarification of historical events as opposed to a public process that is set for the more ambitious social goals of reconciliation or national healing.

What we are likely to see in the future is the application of the South Africa model with its more ambitious goals and the public and participatory process these goals entail. We are already witnessing the beginning of this trend with Canada recently (April, 2008) establishing a Truth and Reconciliation Commission to examine the legacy of forced cultural assimilation of the Aboriginal children and other human rights violations.¹⁷ Also, in my interview with him in 2005, Alex Boraine foresaw that “the day

¹⁵ See Chapter 3: Modes of Accountability: Typological Framework

¹⁶ The United States’ Commission on Wartime Relocation and Internment of Civilians (1981); Canadian Royal Commission on Aboriginal Peoples (1991); The United States’ Advisory Committee on Human Radiation Experiments (1994); Australian Human Rights and Equal Opportunity Commission. See, Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, NY: Routledge, 2001), 17-19 and 298-299.

¹⁷ “Canada’s Truth and Reconciliation Commission,” Special Press Release, April 29, 2008 *International Center for Transitional Justice Official Website*, (accessed 22 March 2009); available from www.ictj.org. Also in Northern Ireland, Sinn Féin President Garry Adams has recently called for a truth commission in

is going to come when Americans are going to face up to what they have done in Iraq.”¹⁸ By 2008, this idea seems to be more likely as Congressman Dennis Kucinich has recently proposed a Truth and Reconciliation Commission on the lead up to the war in Iraq.¹⁹

The future of truth-seeking commissions by mature democracies is not propelled by these states’ need to establish international legitimacy; rather, this trend is likely to be supported by what Sikkink and Finnemore term the internalization of the norm, which is the final stage of the norm’s life-cycle. In the internalization stage, the international institutionalization of the norm is strengthened and deepened so that the norm reaches a “taken-for-granted quality.”²⁰ The norm’s innate normative qualities are no longer a matter of public debate and states abide by the norm out of conformity.

order to establish post-conflict reconciliation, see Transitions Newsletter, October 2008 *International Center for Transitional Justice Official Website*, (accessed 22 March 2009); available from www.ictj.org. The initiation of truth and reconciliation commissions in mature democracies has also been actively propagated by the ICTJ, which recently began working in Brazil. During its democratization in the mid-1980s, Brazil opted for a policy which combines amnesty and reparations. It had a non-official fact-finding – the Nunca Mais (Never Again) project – which was carried out by team of volunteers under the auspices of the Archdiocese of San Paolo. Currently, the ICTJ is shepherding an initiative for a truth-seeking process that will override the long-standing refusal to take responsibility over the past. See, Eduardo Gonzalez, Senior Associate, ICTJ, Announcing the ICTJ initiative of the Sao Paulo Symposium to Address the Need for Truth and Accountability. ICTJ Press release, by email May 24, 2007

¹⁸ Alex Boraine, "interview by the author, tape recording," (International Center for Transitional Justice, New York, NY).

¹⁹ Transitions Newsletter, October 2008 *International Center for Transitional Justice Official Website*, (accessed 22 March 2009); available from www.ictj.org.

²⁰ One vision for the strengthening and deepening of the institutionalization of the truth-seeking norm is the proposal by some to establish an ICC-like permanent international truth commissions. This commission will work along with the ICC to investigate cases of genocide, war crimes, and crimes against humanity all around the world, Michael P Scharf, "The Case for a Permanent International Truth Commission," *Duke Journal of Comparative & International Law* 7, no. 2 (1997).

In another proposal, the former President of Finland, Matti Ahtisaari, has proposed an international truth commission to address broad historical injustices, including the investigation of colonial rule and legacy, the historical patterns of slavery, and the causes and consequences of the Third World debt crisis. See, Tuomas Forsberg and Tevio Teivainen, "Past Injustices in World Politics: Prospects of Truth-Commission-Like Global Institutions," (Helsinki, Finland: Crisis Management Initiative, Office of President Ahtisaari, 2004).

In these proposals, the rationale for a global (or international) truth commission mirrors the rationales that emerged from the South African experience. The commission is expected to: advance international-level democratization the very same way that national truth commissions are supposedly doing it; promote

To fully account for the future trend of the truth-seeking norm, one must also consider the states that choose to “violate” the norm. That is, states that do not pursue a truth and reconciliation commission to address their legacy of human rights violations. There are three groups of states that constitute these “dogs that do not bark.” The first group of states is those that went through a process of democratization before the year 2000, but did not have a truth commission (e.g., Brazil, Mozambique). This is the least interesting group of states in relations to the argument I advance. Before the cascading of the norm there is no reason to expect that all states would adopt the practice associated with the norm. Since there is no international norm to talk about, this group of states is not actual violators of any norm.

The second group of states is one that encompasses non-democratizing states. This group is also beyond the scope of my argument since leaders of these states are neither interested in adopting a mechanism that supposedly consolidates democracy nor are they interested in establishing a democratic international image. As I demonstrate in my analysis, those motivations are necessary at the norm cascading stage, and it is, therefore, not surprising that their absence precludes the norms’ practice. Obvious examples include North Korea and Iran as well as Myanmar and Cambodia.

The most interesting cases of dogs that do not bark are states that have been going through a process of democratic transition or democratic reforms since 2000 but have opted out from establishing a truth and reconciliation commission. A notable example of this type of norm violators is Russia, which has been going through an inconsistent

international reconciliation; advance the creation of an international public sphere and strengthen global civil society; foster a culture of human rights; and, establish a common global historical narrative about contested events and processes.

process of democratization since the early 1990s. My theory proposes that at the norm cascading stage the institutionalization of the norm creates new incentives for states as well as new international expectations. However, not all states value these incentives and expectations in the same way. States like Russia have other means, such as military or economic power, for gaining international legitimacy: they therefore, value less the international benefits that are embedded in the norm of truth-seeking. While Russia undoubtedly has dark periods in its past that call for a truth-seeking process (e.g., Stalin's Purges in the late 1930s) as well as questionable record of current human rights practices, my theory does not necessarily predict that Russia will abide by the norm even while going through a process of democratic reforms. Accordingly, norm "violators" are likely to remain. In general, however, and due to the growing participation of intentional actors in recent democratization processes identified earlier in this dissertation, I foresee that the number of norm "violators" will get smaller and states which haven't had a truth commission so far will establish one in the near future.

Theoretical Contributions to the Study of International Norms

The general theoretical question this dissertation addresses is how do international norms emerge and spread. The theory I propose focuses primarily on changes in the ideational content of norms and on the international agents that facilitate these changes. By and large, the case of the truth-seeking norm supports the plausibility of my theoretical propositions and provides valuable insights into the emergence and cascading of prescriptive norms in international politics. The variables and mechanisms I propose and the process I analyze offer better specification than what is found so far in

international relations literature on norm emergence. In what follows, I summarize the main contributions of my theory to the study of international norms and evaluate the general applicability of my theory.

Theory-Building

Above all, the theoretical contribution of this dissertation is of theory refinement and specification. Building on Finnemore and Sikkink's Norm-Life-Cycle model, my theory emphasizes the key role of norm entrepreneurs for norm emergence and proposes that the spreading of the norm is explained by its international institutionalization and the consequent introduction of new international motivations. Beyond that, however, the theory I propose focuses on a specific type of norm entrepreneurs – the epistemic community – and therefore provides a better account of how ideas emerge and spread. What is more, the theory introduces the critical role of a successful precedent and of the change in the rationalizations attached to the norm, both of which are variables that have been overlooked by other theories of international norms' emergence.

In the case of the truth-seeking norm the critical role of the South African TRC as a successful, or seemingly successful, precedent was obvious. In my theory, the key role of the successful case is its strong demonstration effect which provides an important point of reference for others to follow. Ideas, as much as they are important for the spread of international norms, are not likely to take hold if one cannot visualize the potential effects of adopting these ideas. Therefore, while not all cases of international norms are likely to have an equally obvious "ideal-type" precedent, for a norm to emerge there needs to be a seemingly successful application, which turns the abstract ideas and values

that are associated with the norm into practice. In the case of the international norm of decolonization (emerging post-WWI), for example, the earlier experience of the decolonization of the Americas played this role, by validating the normative virtues and mainly the long-term economic and political merits of decolonization.²¹

The second variable in the norm emergence stage is an active epistemic community, which is a committed network of professionals and experts-in-their-domain who are strongly attached to the practice and to its rationales, and who actively advance the practice. Members of an epistemic community are not necessarily conscious advocates of international norms. They are professional problem-solvers: they frame the cause-effect relationship between the problems states' face and specific policy prescriptions. In short, they produce, select and legitimize ideational innovations. One of the main added values of this framework is that it uncovers the critical role of specific individuals in the process of norms emergence. Moreover, it draws attention to the importance of communities of academics in world politics. The truisms academic scholars produce and propagate are not merely scientific facts; rather, they are an important mechanism for shaping the way policy practitioners and states' leaders define their policy needs as well as their policy options.

In the case of the truth-seeking norm the epistemic community was a mix of advocates, practitioners, and scholars. A key aspect of their effect on the spreading of the norm was the establishment of the community's organizations apparatus – the ICTJ. Epistemic communities do not always take the same form or operate in the same way.

²¹ Neta C Crawford, *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention* (Cambridge, UK: Cambridge University Press, 2002).

Scientists working within states' bureaucracies, for example, account for the emergence and spread of environmental norms, and Neoliberal economists within the International Monetary Fund (IMF) account for the spread of the ideas of capital account liberalization and their application in emerging markets.²² Despite these variations, the small network of knowledge professionals as the mechanism for producing, framing and legitimizing policy problems and policy solutions, is present across these different cases of international norms.

The critical role of an epistemic community is illustrated by cases of non-norms, that is, international norms that have not yet emerged. Cases in point are international norms of gender equality, such as the principle of equal compensation ("equal pay for equal work"), the principle of domestic work compensation ("housework as work"), and the principle of paid maternity leave. In spite of the feminist movement's many achievements and the numerous legal and political precedents worldwide that endorse these principles, they have failed to emerge as an international norm. I propose that this failure is partially due to the nonexistence of a relevant epistemic community. These principles are supported by many activists and advocates; however, there has not been a specific group of professional experts that systemically developed and legitimized the rationales (not only normative, but also economic and political) that would have supported the emergence of a norm that addresses gender inequalities.

The third variable in my theory is the change in the norm's content, that is, the logic of why a specific practice is positive or good and what or for whom it is good for.

²² James Gustave and Peter M Hass, *Global Environmental Governance* (Washington, DC.: Island Press, 2006).; Jeffery Chwieroth, "Neoliberal Economists and Capital Account Liberalization in Emerging Markets," *International Organization* 61, no. 2 (2007).

The introduction of this variable is my theory's main novelty and contribution. Most, if not all, scholars refer to norms as a fixed variable and they largely assume that, beyond minor adaptations, norms do not change. I argue that norms do change and that these changes in rationalizations are a critical mechanism for norm emergence. My theory specifies at least three ways that content change affects norm emergence. One, it broadens the range of goals – both moral and practical – expected to be attained by adopting the norm. Two, it distinguishes the practice from other similar or alternative practices. Three, it elevates the normative status of the practice, thereby attaching positive moral values to it and/or to the actors who adopt this practice. These changes make the ideas and practices associated with the norm congruent with more settings, contexts, and states and are likely to make the norm more persuasive.

The first implication of this proposition is that norm emergence is not a linear goal-oriented process predetermined by norm entrepreneurs who set out to create an international norm. Rather, norm emergence is a dynamic process in which ideas, practices, and consensus change significantly. Therefore, our ability to predict which international norms will emerge and which will not is limited. At the most, the study of international norms should focus on uncovering these changes as they occur and thereby offer a better understanding of the actual process in which the ideational and normative international environment is shaped.

The second implication pertains to empirical research on the effects of norms. My argument about empirical research on the effect of truth commissions is also valid in general: earlier applications of a norm operated within different international normative environments, under different rationales and with different goals than later ones.

Therefore, not differentiating between early and late cases is likely to yield bias in the evaluation of their effects. I reiterate my proposition that in order to avoid these biases, researchers must contextualize their dependant variables, that is, the expected effects of the norm within the changes in the norms' content. At a minimum, large-n studies, which are prone to the bias of aggregating early and late cases of the norm's application, must include a time-series analysis that captures the changes in the norm's content across time. I also reiterate my conclusion that a methodology of case-study analysis is by far more suitable for measuring the impact and effectiveness of international norms. In case-study analysis, one can gain a better understanding of the changes in the rationales that frame the expected effects of the norm at different points in time.

The third implication also has to do with the way we study international norms. If indeed, as I propose and demonstrate, the change in the content of norms is an important variable; then it would potentially affect the strength of the norm. In theory, the more a norm is flexible and adaptable to change, the more it is likely to be congruent with more settings and hence stronger. On the other hand, rigid ideational frameworks that do not allow for change are likely to yield weaker international norms. My study did not explore this proposition, which calls for further research. This line of research will require developing measures for how flexible or rigid ideational frameworks are and what constitutes weak and strong norms.

In the norm cascading stage my theory did not introduce new variables. Building on Sikking and Finnmore, I propose two processes that are necessary for the international spread of an emerging norm: growing international institutionalization of the norm's normative ideas and their behavioral manifestation; and, new international expectations

and incentives that motivate states' leaders to act in accordance with the norm. In my theory, however, these two processes do not only describe how norms cascade; but also propose that the interaction between these processes has a causal effect on the further cascading of the norm. Primarily, the institutionalization of the norm creates a new environment of international expectations and incentives. Following these developments at the international level, states are increasingly motivated to abide by the norm in order to enhance their international prestige and legitimacy. In addition, domestic groups or other advocacy networks are able to leverage the institutionalization of the norm in their domestic campaigns.

This proposition illustrates and reaffirms the significance of two-level models for analyzing international processes. Neither domestic nor the international variables and mechanisms can account by themselves for the spreading of international norms. The alignment of domestic and international incentives, specifically around the issue of legitimacy, played an important role in the case of the truth-seeking norm. Similarly, the absence of this alignment can explain “non-norms” of gender equality. As I propose earlier, there has never been a specific group of professional experts who systemically developed and legitimized the rationales to support the emergence of these norms. Moreover, these principles were never framed in a way that aligns domestic and international incentives, such as a necessary component of democratization or economic development, or both. If there are no international incentives attached to practices of gender equality, as my theory would predict, it is highly unlikely that these principles will emerge or cascade as an international norm.

The Generalizability of the Theory

Given that my theory was probed on a single case-study, the generalization of the theory is not without caveats.²³ The international norm of truth-seeking emerged out of the conjunction between the international context at the end of the Cold War and the South African specific domestic context. These contextual conditions are unlikely to be present in other cases of international norms. Therefore, I propose no more than probabilistic generalizations. I argue that the external validity of my theory depends on situating its variables and mechanisms within the specific historical and social context of the norm under study. I propose that the causal explanation that I outlined identifies the important variables and the processes that make international norms possible and even probable. At the same time, I caution that each of the propositions of my theory as well as their combined operation is not necessarily sufficient for norm emergence nor do they explain all ways in which international norms emerge.

My theory's explanatory power is focused on prescriptive norms, that is, norms that advocate, rather than denounce social or political practices. Examples of prescriptive norms include: environmental norms;²⁴ norms of economic liberalization;²⁵ the norm of

²³ Constructivist research designs are in general skeptic of strong generalizations and aim, at the most, to explain how practices emerge and prevail in a particular context, Audie Klotz and Cecelia Lynch, *Strategies for Research in Constructivist International Relations* (New York, NY: M.E. Sharpe, 2007), 9.

²⁴ James Gustave and Peter M Hass, *Global Environmental Governance* (Washington, DC.: Island Press, 2006).; Charlotte Epstein, "The Making of Global Environmental Norms: Endangered Species Protection," *Global Environmental Politics* 6, no. 2 (2006).

²⁵ Rawi Abdelal, *Capital Rules: The Construction of Global Finance* (Cambridge, MA: Harvard University Press, 2007). While Abdelal does not use the language of my theory his analysis largely lends itself to the propositions of my theory. In his account of the emergence of the principle of liberalization of capital markets there is a "successful case" – France, there is an epistemic community – Socialists and economists within the Mitterrand's government, and there is change in the rationales that are attached to global financial deregulation.

justified intervention;²⁶ women's right to vote or gender equality in general; the norm of decolonization; the norm of refugees' asylum;²⁷ and others. The spread of prescriptive norms is likely to be more a matter of voluntary adoption rather than a response to the threat of sanctions. Therefore, my theory, which focuses on the power of ideas and primarily on positive incentives, is appropriate for explaining these cases.

I would also add that my theory can potentially explain not only the spread of "good" norms but also "bad" ones. In international relations' norm literature there is an inherent bias of studying "good" norms that largely reflect the current Western-Liberal normative consensus about the benign effects of these norms. Indeed, one of the criteria for selecting the case of the truth-seeking norm was that this norm is "mediocre" in the sense that it spreads in spite of widespread doubts and criticisms about its benign effects. A case in point for a "bad" norm is the emergence and spread of Social Darwinism. In the late 19th and early 20th centuries, social Darwinist ideas were popular among many European and American scientists and intellectuals, who, by my definition, qualify as an epistemic community.²⁸ Through their professional and personal ties, they spread their ideas internationally and also had access to decision-makers in Britain, Germany, and the United States, where their ideas and scientific arguments inspired policymaking.

All in all, my theory offers a compelling explanation for the emergence and spread of the truth-seeking norm. Moreover, the theory's variables and mechanisms are

²⁶ Laura W Reed and Carl Kaysen, eds., *Emerging Norm of Justified Intervention* (Cambridge, MA: American Academy of Arts and Science, 1993).

²⁷ Agnes Hurwitz, *The Collective Responsibility of States to Protect Refugees* (Oxford, UK: Oxford University Press, 2008).

²⁸ Mike Hawkins, *Social Darwinism in European and American Thought: 1860-1945* (New York, NY: Cambridge University Press, 1997).; Alexander Rosenberg, *Darwinism in Philosophy, Social Science, and Policy* (Cambridge, UK: Cambridge University Press, 2000).

general enough to be applied across other cases of international norms. Additional research along the lines earlier discussed can further test my theory's external validity. Given my theory's focus on the changes in the ideational content of norms, by studying the emergence and spread of other international norms we are likely to gain more insight into the international normative environment in which states operate.

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Appendix
Truth-Seeking Commissions "Universe of Cases"

	<i>Year</i>	<i>Country</i>	<i>Title</i>	<i>Events Investigated</i>	<i>Report</i>	<i>Stage of Operation</i>	<i>Mandated by:</i>	<i>International Sponsorship or Participation</i>	<i>Democratization Process</i>	<i>Region</i>
1	1974	Uganda	Commission of Inquiry into Disappearances	Disappearances during the first years of Amin's Government, 1971-1974	1975	Completed	President	No	No	Africa
2	1982	Bolivia	National Commission of Inquiry into Disappearances	Disappearances during 1967-1982	none	Halted	President	No	Yes	Central / South America
3	1983	Argentina	National Commission on the Disappeared (CONADEP)	The arrest, torture and killings by successive military juntas between 1976 and 1983	1985	Completed	President	No	Yes	Central / South America
4	1985	Uruguay	Commission for the Investigation of the Situation of the Disappeared and Related Events	Disappearances during military rule, 1973-1982	1985 not public	Completed	Parliament	No	Yes	Central / South America
5	1985	Zimbabwe	Commission of Inquiry	Governmental repression in the Matabeleland region	confidential	Completed	President	No	No	Africa
6	1986	Uganda	Commission of Inquiry into violation of Human Rights	Human Rights violations 1962-1986	1994	Completed	President	Yes	No	Africa

	<i>Year</i>	<i>Country</i>	<i>Title</i>	<i>Events Investigated</i>	<i>Report</i>	<i>Stage of Operation</i>	<i>Mandated by:</i>	<i>International Sponsorship or Participation</i>	<i>Democratization Process</i>	<i>Region</i>
7	1986	The Philippines	Presidential Committee on Human Rights	Human Rights violations dictatorship of President Ferdinand Marcos, 1972-1986	none	Halted	President	No	Yes	Asia
8	1990	Chile	National Commission on Truth and Reconciliation	Deaths by government agents during the Pinochet regime, 1973-1990	February, 1991	Completed	President	No	Yes	Central / South America
9	1990	Chad	Commission of Inquiry into the Crimes and Misappropriations	Human Rights violations during the Habre regime, 1982-1990	May, 1992	Completed	President	No	No	Africa
10	1990	Nepal	Commission of Inquiry (Two commissions)	Torture, disappearances, and executions during the Panchayat System, 1962-1986	1991 / public in 1994	Completed	Prime Minister	No	No	Asia
11	1992	El Salvador	Commission on the Truth for El Salvador	Serious acts of violence by government, 1980-1991	March, 1993	Completed	United Nation	Yes (part of the peace accord)	Yes	Central / South America
12	1992	Germany	Study Commission for the Assessment of History and Consequences of the SED dictatorship in Germany	Practices of the Socialist Unity Party (SED) dictatorship in East Germany, 1949-1989	June, 1994	Completed	Parliament	No	Yes (unification)	Europe

	<i>Year</i>	<i>Country</i>	<i>Title</i>	<i>Events Investigated</i>	<i>Report</i>	<i>Stage of Operation</i>	<i>Mandated by:</i>	<i>International Sponsorship or Participation</i>	<i>Democratization Process</i>	<i>Region</i>
13	1993	Honduras	National Commissioner for the Protection of Human Rights	Disappearances by military and security forces, 1981-1993	January, 1994	Completed	Government	No	Yes	Central / South America
14	1994	Haiti	National Truth and Justice Commission	Human rights violations and serious crimes during the military regime, 1991-1994	February, 1996	Completed	President	Yes	Yes	Central / South America
15	1994	Sri Lanka	Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons (3 regional commissions)	Disappearances of people during armed ethnic conflict, 1988-1994	September, 1997	Completed	President	No	No (ongoing ethnic conflict)	Asia
16	1994	Guatemala	Historical Clarification Commission (CEH)	Human Rights violations during the civil war, 1962-1996	February, 1999	Completed	United Nation	Yes (part of the peace accord)	Yes	Central / South America
17	1995	Burundi	Commission to Investigate Killings in 1993 Coup Attempt	Events and massacres relating to the assassination of President Melchior, 1993-1995	1996 / not public	Completed	United Nation Security Council	Yes	yes	Africa
18	1995	South Africa	Truth and Reconciliation Commission	1960-1994	October, 1998	Completed	Parliament	No	Yes	Africa

	<i>Year</i>	<i>Country</i>	<i>Title</i>	<i>Events Investigated</i>	<i>Report</i>	<i>Stage of Operation</i>	<i>Mandated by:</i>	<i>International Sponsorship or Participation</i>	<i>Democratization Process</i>	<i>Region</i>
19	1996	Ecuador	Truth and Justice Commission	Allegations of human rights violations 1979-1996	none	Halted	Ministry of Government and Police	Yes	Yes	Central / South America
20	1999	Nigeria	The Special Human Rights Commission	Gross human rights violations under the military rule, 1966-1999	2002 / not public	Completed / extended as Human Rights Commission	President	No	Yes	Africa
21	2000	Uruguay	Peace Commission (Para la Paz)	Disappearances during military regime, 1973-1985	April, 2003	Completed	President	No	Post-democratization	Central / South America
22	2000	South Korea	Presidential Truth Commission on Suspicious Deaths	Suspicious deaths during military dictatorship, 1953-1987		Ongoing / extended	President	Yes (international counseling)	Post-democratization	Asia
23	2000	Sierra Leone	Truth and Reconciliation Commission	Human rights violations and abuses during the civil war, 1991-1999	October, 2004	Completed / extended	National Legislation following the Peace Accord	Yes	Yes	Africa
24	2000	Lebanon	Commission of Inquiry into Disappearances	Disappearances during civil war, 1975-1990	August, 2000 / not public	Halted	Government	No	No	Middle East
25	2001	Peru	Truth and Reconciliation Commission	Violence during the armed conflict with the Shining Path Guerrillas, 1980-2000	August, 2003	Completed	(Caretaker) Government	No	Yes	Central / South America

	<i>Year</i>	<i>Country</i>	<i>Title</i>	<i>Events Investigated</i>	<i>Report</i>	<i>Stage of Operation</i>	<i>Mandated by:</i>	<i>International Sponsorship or Participation</i>	<i>Democratization Process</i>	<i>Region</i>
26	2001	Panama	A Truth Commission	Crimes and human rights violations during military regime, 1968-1989	April, 2002	Completed	President	No	Yes	Central / South America
27	2001	Ghana	National Reconciliation Commission	Human rights violations, 1957-1993	October, 2004	Completed	Parliament	No	Yes	Africa
28	2001	Serbia and Montenegro	The Yugoslav Truth and Reconciliation Commission	The causes of and human rights abuses during conflict, 1991-2000		Halted	President	Yes	Yes	Europe
29	2002	East Timor	Commission for Reception of Truth and Reconciliation	Human Rights violations during the Indonesian control, 1974-1999	November, 2005	Completed	UN Transitional Administration in East Timor	Yes	Yes	Asia
30	2003	Paraguay	Truth and Justice Commission	Human Rights abuses during the Alfredo Stroessner dictatorship, 1954-1989		Ongoing	Parliament	No	Yes (post)	Central / South America
31	2003	Central African Republic	Truth and Reconciliation Commission	Causes of unrest since independence, 1960	2003	Completed	Government	No	Yes	Africa
32	2003	Algeria	Commission on Disappearance	Abuses and disappearances during the armed conflict between the security forces and the Islamic militants, 1991-1999		Ongoing / halted	President	No	Yes	North Africa

	<i>Year</i>	<i>Country</i>	<i>Title</i>	<i>Events Investigated</i>	<i>Report</i>	<i>Stage of Operation</i>	<i>Mandated by:</i>	<i>International Sponsorship or Participation</i>	<i>Democratization Process</i>	<i>Region</i>
33	2003	Bosnia (Republika Srpska)	Local government Commission on Srebrenica Massacre	The massacre of July 1995	June, 2004	Completed	Local National Assembly	Yes	Yes	Europe
34	2004	Morocco	Equity and Reconciliation Commission	Disappearances, deaths, and human rights violations, 1956-1997	December, 2005	Completed	King	Yes	Partial	North Africa
35	2004	Indonesia / East Timor	Truth and Friendship Commission	Violence during the Indonesian pull-out from East Timor, 1999		Ongoing	Both Presidents	No	Yes	Asia
36	2004	Liberia	Truth and Reconciliation Commission	Human rights abuses and armed conflict during the rule of president Charles Taylor, 1989-2003		Ongoing	National Transitional Government following a UN-brokered peace accord	Yes	Yes	Africa
37	2004	Indonesia	Truth and reconciliation Panel	state-sponsored killings and abductions during the dictatorship of president Soeharto, 1967-1998		Ongoing	Parliament	No	Yes	Asia
38	2005	Burundi	Truth and Reconciliation Commission	Crimes and human rights committed between 1962-2000		Ongoing	UN Security Council and the Power-Sharing Government / based on the 2000 peace accord	Yes	Yes	Africa

	<i>Year</i>	<i>Country</i>	<i>Title</i>	<i>Events Investigated</i>	<i>Report</i>	<i>Stage of Operation</i>	<i>Mandated by:</i>	<i>International Sponsorship or Participation</i>	<i>Democratization Process</i>	<i>Region</i>
39	2005	Columbia	National Commission of Reparation and Reconciliation	Paramilitary activity during civil war		Ongoing	Congress / OAS	Yes	Yes	Central / South America
40	2005/6	Democratic Republic of Congo	Truth and Reconciliation Commission	Human rights violations during the Mobutu dictatorship and armed conflict, 1965-2003		Initiative / drafted legislation	December 2002 peace accord / Government	Yes	Yes	Africa
41	2005/6	Bosnia and Herzegovina	Truth and Reconciliation Commission	Human rights violations committed during the conflict in the former Yugoslavia, 1990-1995		Initiative / drafted legislation	Representatives of leading political parties	Yes	Yes	Europe